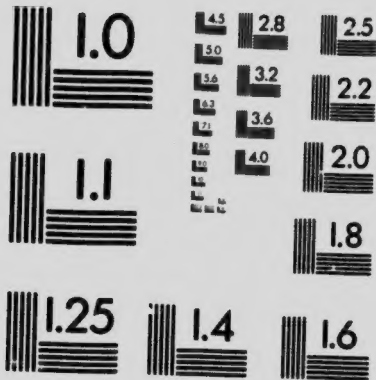


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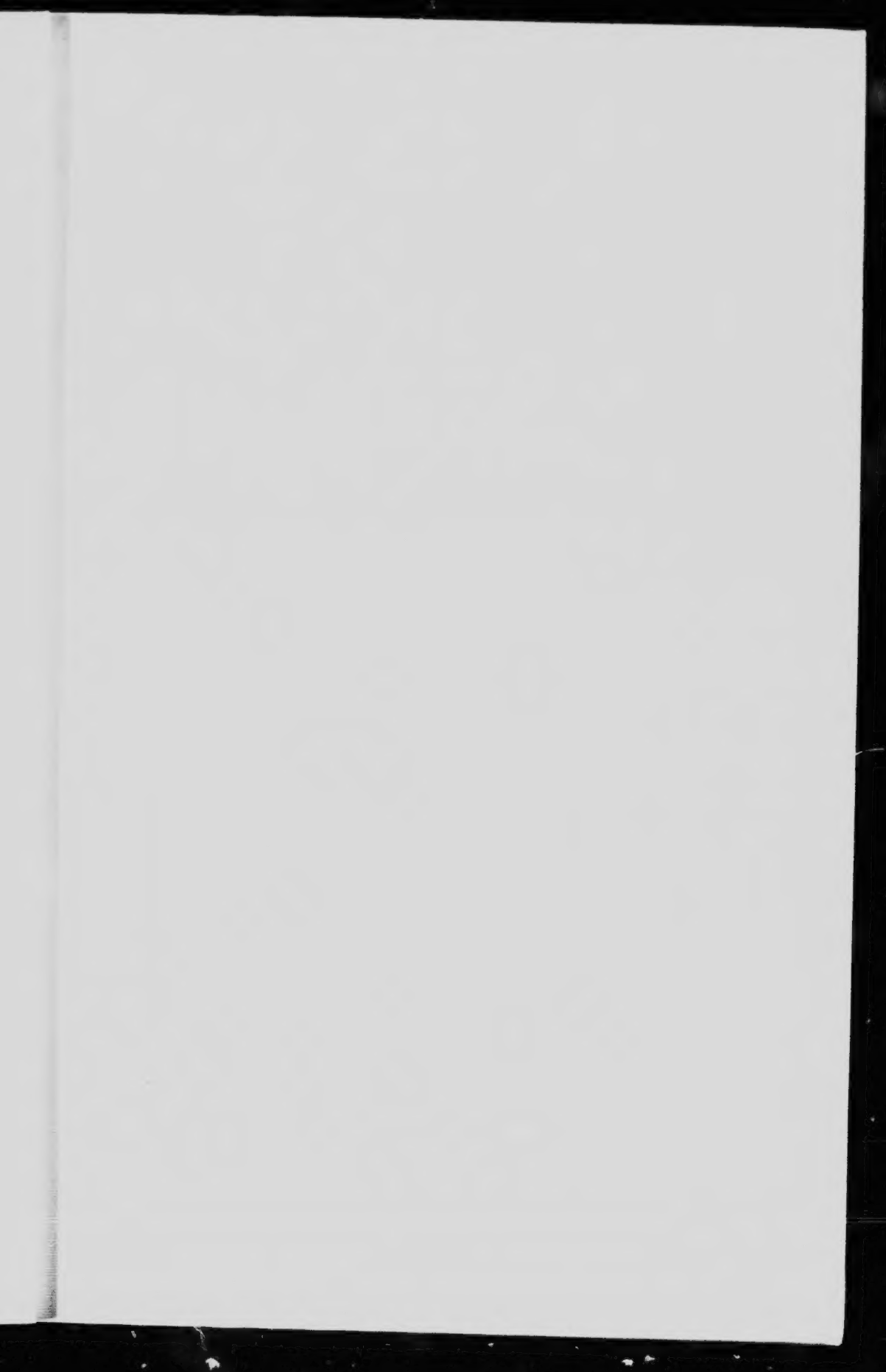


**Notable Scottish Trials**

**James Stewart**

(The Appin Murder)

PRINTED BY  
WILLIAM HODGE AND COMPANY  
GLASGOW AND EDINBURGH





Archibald, third Duke of Argyll, Lord Justice-General of Scotland.

# Trial of James Stewart

(The Appin Murder)

EDITED BY

David N. Mackay

Writer, Glasgow



CANADA LAW BOOK COMPANY

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TO  
ALEXANDER CAMPBELL FRASER, D.C.L., LL.D., LITT.D.,  
FELLOW OF THE BRITISH ACADEMY,  
PROFESSOR (EMERITUS) OF LOGIC AND METAPHYSICS  
IN THE  
UNIVERSITY OF EDINBURGH,  
GREAT-GRAND-NEPHEW OF COLIN CAMPBELL OF GLENURE,  
THIS VOLUME  
IS  
RESPECTFULLY DEDICATED  
BY  
THE EDITOR.



## PREFATORY NOTE.

THE story of those strange doings in my native county of Argyll has attracted me since I first came to close quarters with it in the pages of "Kidnapped" and "Catriona." Long before the present series of books on "Notable Trials" was announced I had collected a considerable stock of information concerning it. In the more serious task of editing this volume I have received kindly assistance from various gentlemen, and I now respectfully express my thanks to the members of the Faculty of Advocates for allowing me to include extracts from the manuscript minute books and letter books of the Barons of Exchequer; to Mr. W. B. Blaikie for giving me access to his unique collection of unpublished manuscripts dealing with this trial; to Captain Douglas Wimberley, Inverness, for allowing me to reprint a large number of "The Bighouse Papers" which were some years ago edited by him for the Gaelic Society of Inverness, and afterwards published separately; to Mr. Neil Munro for lending me a rare copy of the letters of "Amicus" in reply to General Stewart of Garth; to Mr. Duncan Reid, of Glasgow, for specially translating Duncan Ban Macintyre's famous "Elegy on Glenure"; to Miss V. M. Montagu, of Paris, for her endeavours to trace the history of Allan Breck Stewart after his escape to France; to my friend Mr. John Ireland Falconer, Edinburgh, for his valuable notes on the office of Lord Justice-General of Scotland as that office existed in 1752. My thanks are also gratefully tendered to Professor Campbell Fraser, the Reverend A. Stewart Macinnes, Glencoe, and numerous Argyllshire friends and acquaintances, for putting their special knowledge at my disposal.

The official papers used at the trial have been unaccountably lost or mislaid. No trace of them could be found in the store-rooms of the High Court of Justiciary. I have therefore had

to depend upon the records printed in 1753 by Messrs. G. Hamilton and J. Balfour, of Edinburgh, and those included in the "State Trials" (vol. xix.). These records exhibit a lack of uniformity in the spelling of proper names, but (except in the Introduction) I have not thought it desirable to modernise the orthography.

The Introduction deals only with recorded facts and with such inferences as are obvious. The traditional matter, which is perhaps the most attractive in the book, has been separately collected in the Appendix (p. 366).

I shall be grateful if persons who know facts bearing on this trial, other than those here included, will do me the favour of communicating them to me.

D. N. M.

GLASGOW, *October*, 1907.

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1. 15-6.—James Stewart and Allan Breck Stewart take part in the Rebellion under Prince Charles Edward Stuart. Colin Campbell of Glenure serves in King George's army.
- 1747.—Allan Breck goes to France (see Bighouse papers).
- 1748.—Glenure recommended as factor.
- 1749.
- February 23.—Glenure appointed factor.
- December.—Allan Breck returns to Scotland.
- 1751.
- May.—Allan Breck goes again to France.
- May (Whitsunday).—James Stewart removes from Glenduror to Acharn.
- December 31.—Meeting of James with Glenure and others in a changehouse at Kintalline.
- 1752.
- January 1.—Glenure and Balleveolan dine at Acharn.
- February.—Allan Breck arrives in Edinburgh from France.
- March.—Allan Breck returns to Appin, is seen frequently at Acharn, and soon after (date unknown) speaks wildly of Glenure to Dugald Maccoll and others. Allan Breck also visits Rannoch.
- April 8.—James sets out for Edinburgh.
- Date uncertain.—James talks unguardedly at inn in Teynaluib.
- April 8.—James arrives in Edinburgh.
- April 13.—Glenure gets Precept of Removing against John Colquhoun and others, t<sup>h</sup> Ardshiel tenants.
- April 18.—Bill of Suspension presented by James Stewart to Lord Dun, Ordinary.
- April 19.—James leaves Edinburgh for home.
- April 27.—James arrives at home.
- April 30.—Allan Breck returns from Rannoch.
- May (beginning of).—Glenure goes to Edinburgh.
- May 2.—Allan Breck goes to Cuil, in Appin.
- May 5.—James Stewart's Sist refused by Lord Haining.
- May 7.—Glenure leaves Edinburgh for home.
- May 8.—Allan Breck and Charles Stewart (son of James) spend the night at Fasnacloich.
- May 9.—Glenure arrives at home; Allan Breck and Charles still at Fasnacloich.

## TABLE OF DATES.

- May 10.—Allan and Charles still at Fasnacloich.
- May 11.—Glenure leaves home for Fort-William. Allan Breck goes from Fasnacloich to Acharn, and borrows James's clothes. Sups with family. Stays night at Acharn—in barn.
- May 12.—Allan Breck goes to Ballachulish, Carnock (with young Fasnacloich), and Callart. Spends night at Callart.
- May 13.—Allan Breck returns to Carnock, and then to Ballachulish, and spends the afternoon and night there. Young Ballachulish spends night at Acharn.
- May 14, morning.—James Stewart sends messenger to Charles Stewart, writer in Maryburgh, asking him to come to Acharn. 12 noon.—Allan Breck leaves Ballachulish House about mid-day to go fishing. Young Ballachulish goes to Appin's house.
- GLENURE MURDERED between 5 and 6 p.m.
- Evening.—James's servants hide two guns under thatch.
- Nightfall.—Allan Breck seen by Katherine MacInnes and Donald Stewart on hillside near Ballachulish House.
- May 15, 3 a.m.—Allan Breck wakens family at Carnock and says farewell.
- 10 a.m.—Donald Stewart says he gave Allan Breck's message to James at this hour.
- Noon.—James sends packman to get £5 or £5 5s. from William Stewart, Maryburgh. William Stewart says packman arrived about 10 or between 10 and 12. Allan Stewart says packman left about 12 o'clock, and that he arrived at Fort-William early in the evening.
- Evening.—Mrs. Stewart tells Katherine Maccoll to hide Allan Breck's clothes.
- Evening.—James Stewart's men hide the guns and four swords in the moor.
- May 16.—Packman returns to Acharn with £3 3s.
- Afternoon.—Allan Breck seen at Koalishnacooan by the bouman. James and Allan (son) arrested at Inshaig, quarter of a mile from Acharn.
- Evening.—Allan Breck's clothes brought back to Acharn. Mrs. Stewart sends packman with £5 5s. and clothes to Allan. Packman leaves for Koalishnacooan after supper.
- May 17, morning.—Packman arrives at Koalishnacooan. Warrant for James Stewart's arrest signed in Edinburgh.
- Evening.—Allan Breck wakens the bouman and gets the money and clothes. Packman leaves Koalishnacooan at noon; returns to Acharn.
- During night.—Allan Breck changes his clothes and departs.
- May 18 or 19.—Allan Breck seen at Leckinstrensmuir. Allan seen in Arlarich, Rannoch, by Allan Oig Cameron.
- May 19.—James writes from prison to John Macfarlane, W.S., expressing horror at the murder, and describing Allan Breck. Allan Breck still at Arlarich.
- May 20.—Allan Breck leaves Arlarich.
- May 22.—Mrs. Stewart, her son Charles, and her daughter examined by Sheriff.

## TABLE OF DATES.

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- May 23.—Guns found on moor near Acharn by Captain Chapeau.  
Charles re-examined by Sheriff.
- May 24.—Allan Breck seen fourteen miles from Arlarich.
- May 25.—Mrs. Stewart and Charles re-examined by Sheriff.
- May 26.—Burial of Glenure in Ardehatten Priory.
- End of May.—Allan Breck seen in Invernahadden, Rannoch.
- June 2.—James Stewart examined by Sheriff.
- June 3.—James again examined by Sheriff. Allan (son) examined by Sheriff.
- June 4.—Charles Stewart re-examined by Sheriff.
- End of June.—Mrs. Stewart allowed to see her husband for first time, except immediately after the arrest.
- July 6.—Warrant for Stewart's arrest heard of for first time, though dated 17th May.
- July, date unknown.—Allan Breck's black coat with silver buttons and powder horn in pocket found by Sergeant Baird in a cleft of a rock at Koalishacoan.
- August 20.—Warrant granted by Lord Justice-Clerk to give prisoner's lawyers access to him.
- August 21.—Criminal letters served on James personally. Criminal letters served on Allan Breck at Acharn in his absence.
- August 25.—Criminal letters served edictally on Allan Breck at Inveraray Cross.
- August 31.—Prisoner's agent leaves Edinburgh.
- September 2.—Prisoner's agent accidentally meets his client at Tyndrum under military escort.
- September 3.—Gregorian Calendar adopted, and this date therefore becomes the 14th under the "new style."
- NEW STYLE.**
- September 18.—Consultation of prisoner's counsel and agent at Inveraray. Counsel refused admission to see their client in prison.
- September 19.—Interview between prisoner and counsel.
- September 21.—Court sits. Opening statements; argument on the relevancy.
- September 22, 6 a.m.—Jury empannelled.
- September 22, 6 a.m.—
- September 24, 7 a.m.—
- } Trial goes on without intermission.
- September 24, 11 a.m.—Jury frames verdict.
- September 25, 11 a.m.—Court resumes—verdict and sentence.
- October 5.—Prisoner transferred to Fort-William.
- November 7.—Prisoner removed from Fort-William to Ballachulish.
- November 8.—Execution of James Stewart.
- November 8, 5 p.m.—Body hung in chains at Cnap Chaolis Mhio Pharuig, Ballachulish.

1753.

January 11.—Barons ask Mungo Campbell, the new factor, to endeavour to get the country people to assist in building a hut for the soldiers who were guarding the body.

1755.

January.—Body falls from the gibbet and is afterwards replaced. Enquiries are made by the authorities, who suspect that it has been detached by friends of the Acharn family.

Date Unknown.—James Stewart's body finally removed from Cnap Chaolis.

*Note.*—Maryburgh was the name then used for the town now known as Fort-William. The latter English term was then applied to the fort only and was naturally unpopular. There never was any full Gaelic name for Fort-William, though it was sometimes contemptuously known as "Gearrastan dubh Inbhirlochaidh," meaning "the black fort of Inverlochy"—not the fort of William. During the present year that old name was used by a beggar woman when complaining to a country gentleman of her ill success in that town.

# THE TRIAL OF JAMES STEWART

OF THE GLEN.

---

## INTRODUCTION.

To secure the attention of any inhabitant of Northern Argyll the stranger has only to mention the name of James Stewart of the Glen. The years that have passed since 1752 have brought many changes to the Appin country, but the story of the tragedy of Lettermore and of its grim sequel at Inveraray and Ballachulish lives in memory still, and, for many reasons, has in itself the promise of long survival. The old enmities of the Stewarts and the Campbells are therein sharply outlined—enmities that had never really died down since they were rekindled by the murder of Campbell of Calder in 1596. This Appin story brings the imagination back to a time when the Highlander still revenged his wrongs as near as possible to the spot where he suffered them, and when the blood feud still passed from father to son. It tells of strong local passions, political and social. The romance of loyalty to chief and clan is preserved in it for the instruction of a generation that finds some difficulty in realising the intensity of those relationships. But such qualities in the story would not, from their own force alone, have conferred immortality on the name of James Stewart. They were present in many post-rebellion tales. Here we have surer preservatives—the mystery of a crime, and the mystery of the entanglements which that crime produced. A man was hanged, and no one has ever been able to justify the doleful deed. In West Highland belief James was an innocent victim of the law, and to the individual whom fate serves thus, the thoughts of posterity are apt to revert. Men place the unjustly condemned in a special category, and that category is second only to that of the martyrs.

## James Stewart.

There were many men on the shores of Loch Linnhe whose doings in those restless days are tempting to a recorder, but it is necessary, in the meantime, to confine our attention to three of them.

James of the Glen—"Seumas a Ghlinne," as his neighbours called him—was, in 1752, tenant of the farm of Acharn, in Duror of Appin. He was a natural brother of Charles Stewart of Ardshiel,\* who had led the Appin Clan at Culloden. He had himself served in the Jacobite army. The entry in the official list of persons concerned in the rebellion, "James Stewart in Appin, Ardshiel's brother—officer in rebel army," almost certainly refers to him, as no record remains of any other person to whom it could be applied; but beyond the fact that he was "out," the actual part taken by him in the Rising is not known. Probably it was an obscure one, for he was pardoned for his doings, and returning to Appin, he became farmer of Glenduror, one of the beautiful valleys that stretch far into the interior of the county. The farm was known to him, for he had occupied it previously, and there he remained till Whitsunday, 1751, when he left for Acharn, on the lands of Campbell of Airds.

In personal character he seems to have been "kindly" and industrious, a good companion, and a warm supporter of any scheme that he took in hand. He was, however, headstrong in several matters, and took no pains to conceal his opinions.

Well known among the neighbouring Stewart and Campbell leaders, this man was on good terms with Ardshiel, whom he afterwards described as "a very affectionate and loving brother." He was much esteemed by "Lady Ardshiel," and we find it recorded that his family and that of Stewart of Fasnacloich were on terms of close intimacy.

His letters give proof of practice in writing, and no reader of the pages that follow will wonder that he became a leader in Appin.

He must have been born in one of the first years of the century, for he says, "I was a schoolboy in the year 1715, and was little more in the year 1719." He married, probably about the year 1725, Margaret Stewart, a sister of William Stewart, who is described in the trial as "merchant in Maryburgh." His wife, though she could not sign her own name, may quite well

\* See Biographical Notes, p. 323.

## Dramatis Personæ.

have been of equal station with himself, for the prejudice against teaching girls the art of writing prevailed in some parts of the Highlands long after her time.\*

The children at Acharn in the year of their sorrow were at least three in number—Allan, a full-grown lad, who shared his father's confidences in public affairs; Charles, a younger son; and Elizabeth, whose declarations before the Sheriff show that she was a young and unobservant girl when history was being made around the home . . . d.†

The care of children other than his own had long before devolved upon this farmer, Donald Stewart, a relative, having left his orphan children in his charge. One of them was Allan (afterwards known as Allan Breck, "Allan the Pock-marked"), whose name was destined to travel far in history and romance. The office of tutor and curator was committed to James by Donald when dying, and though the mother survived and lived in Rannoch, James's duties were by no means light. He gave careful attention to the inheritance of his charges, as well as to their education, justifying in all respects the trust of his dead friend.

The second of our leading personages is this Allan Breck Stewart, who had the instincts of the soldier of fortune. The quiet slopes of Glenduror are even now far removed from the haunts of self-indulgent mortals, yet Allan Breck contrived to learn there the habits of the wastrel. The population of the Appin country was greater then than now (or Prince Charles could not have had 306 Stewarts from that district around his standard at Prestonpans). Taverns and boon companions were so plentiful that Breck soon scattered his patrimony and became a charge upon his guardian. No final breach took place, but the prodigal ward at length sought livelier scenes, enlisting in the service of King George, apparently in Colonel Lee's regiment.

We lose sight of him for a time, but when Prince Charles raised his standard at Glenfinnan, and the cause of "the King

\* It was believed that writing was a dangerous accomplishment for a young lady, as she might be apt to use it in correspondence with members of the other sex. Of the nine women who gave evidence at this trial, or whose depositions were read, six, including Mrs. Stewart's own daughter, were unable to write, while of the fifty-four male deponents only twenty were unable to sign their names.

† Probably Mrs. Stewart was the poor widow with five children for whose benefit the "Supplement" (see Bibliography) was printed.

## James Stewart.

across the water" was actively espoused by the Appin Stewarts for the third time, Allan began to detest the uniform of King George and the idea of having to fight against his own clansmen. At Prestonpans he was taken prisoner—probably a very willing one—and fought with the Jacobites till the fatal day of Culloden, when ninety-two of his clan were buried in one pit on the field of their rout. Like Ardshiel, he ultimately escaped to France. Whether he shared his leader's adventures in the west country before setting sail is not known. He took service in the French army as a cadet, and served in Ogilvy's Regiment, one of the three regiments that were composed of Scotsmen. Its officers seem to have realised the recruiting value of the Appin country, for Allan was allowed to make many visits to his native land. When coming and going in this manner he was able to act as courier between the exiled Ardshiel and his loyal clansmen, who were now paying double rents, to the Crown as owners of the forfeited estates, and then to Stewart of Ardshiel as chieftain. It is clear that some, at least, of the gold from Appin reached the latter through the hands of Breck. It has been alleged that this levy was made upon an unwilling people, and that "Allan Breck was employed to take their horses out of the pleugh for payment" (letter by Mungo Campbell to the Barons of Exchequer, dated 1st December, 1755), but this suggestion lacks probability. It is hard to see how pressure could have been effectively applied.

We now come to the last of the trio—Colin Campbell of Glenure. He was the eldest son of Patrick Campbell of Barcaldine and Glenure by his second wife, Lucia, daughter of the renowned Sir Ewen Cameron of Lochiel. While still a youth he had some experience as an estate administrator. Then he joined Loudon's Regiment. When the rebellion of 1745 broke out, the regiment was employed against the Jacobites, and to Mr. Campbell, at that time a lieutenant, fell the disagreeable task of fighting in this civil war. His mother's folk were on the enemy's side, so his position was unenviable. He also saw some service in Flanders. His corps took part in the unsuccessful defence of Bergen op Zoom, where he may have been in action also.

On the death of his father he received as his share of the

## Glenure.

parental property, the estate of Glenure, which adjoined the Stewart lands, and after the rebellious Mac and his brother Barcaldine became factors on certain forfeited estates. In this capacity he managed Ardshiel, Callart, and Mamore in the Lochiel country. His personal character was undoubtedly attractive. This is clear even from the official records, and Duncan Bàn Macintyre's elegy adds weight to the opinion.

On 9th May, 1749, soon after he became factor on Ardshiel, he married Janet, the eldest daughter of the Honourable Hugh Mackay of Bighouse, and a niece of Lord Reay. As Commissioner of Supply, he took some part in local administration. He was blessed with considerable intellectual keenness and activity of temperament, fond of good society, and ambitious. His new position was not very desirable for its own sake. It involved him in inevitable friction with his neighbours and with his mother's relatives in the Cameron country. Nor was the salary alluring. His efforts as factor on the three estates—the duties which brought him to an untimely death—were rewarded by the yearly sum of £10 10s. 7½d. Ambition must have been a family trait among the Barcaldines, for three members of that house were anxious to succeed him in his office of Crown factor, though in the first year of his duties in Lochaber he had had to apply for military protection when he went rent-collecting. These facts would lead one to infer that Glenure, who was then about forty-five years of age, regarded his appointment merely as a stepping-stone to some more honourable and more lucrative employment in the service of the Government.

The situation in the Highlands at the time was big with possibilities. The cruelties of Cumberland, whose title of "Butcher" no Highlander, whatever his views on the rising may be, is inclined to abandon, and the subsequent energetic measures of the Government, had made another purely internal rising impossible. The forfeiture of the lands of the leading Jacobites had given the authorities a stable footing even in remote regions. Redcoats were numerous. The arm of the law, though not always impartially stirred, was lusty in its blows. Yet, though deprived of gun and claymore, and prohibited from wearing the kilt, the men who had followed the Prince were as loyal to him as ever, and any official of King George

## James Stewart.

was a hated outcast, unless he had personal recommendations of a remarkable kind. The subtle hypnotism of the Royal Stewarts was still effective. Arms and a leader, with a prospect of continental backing, alone were needed to set the heather again on fire. In Appin the unrest was very real. The people had now a Campbell factor in the person of Glenure, and even the fact that he had nominated James of the Glen as his adviser in technical matters did not tell extensively in making his factorship welcome to the Stewarts.

Thus the stage becomes set for our drama. The three men are now in juxtaposition. Mr. Campbell holds the centre of the scene; James Stewart is an understudy, not without aspirations to a leading rôle; and Allan appears as the swashbuckler of the play, the mysterious person in comings and goings, whose part in the *dénouement* not even the most experienced critic can forecast.

The first was a consistent, though not an over-zealous, supporter of the reigning house. The second was an equally determined, but more acutely partisan, supporter of the Royal house whose name he bore. Glenure was anxious to do his duties conscientiously, and James and the Jacobites were determined to offer passive resistance by every artifice to the regime of their conquerors.

Glenure seems to have set himself to make the most of the opportunities for compromise which the existing relationships afforded. He employed James as assistant factor and adviser, though he must have been well aware that James was interested, and even active, on behalf of Ardshiel. James had been assiduous in assisting "Lady Ardshiel," and Glenure must have known this, for, on 28th March, 1750, we find him writing to the Secretary of the Barons of Exchequer, who were his principals in the Crown employment, "I must first beg the favour you send me without loss of time the Barons' orders how to proceed against Lady Ardshiel, who possessed a third part of that estate from Whitsunday, 1746, till Whitsunday, 1749, and is now in France, as I am informed. I should think it throwing away so much money to have her decreeted, as I cannot see the least chance of recovering a shilling of her." On the 14th November of the same year we find Glenure announcing

## The Crown Factor.

that the lady had "quit the possession of any part of the estate, made her elopement, and went off, bag and baggage, to her husband to France." Such expressions were not likely to please his understudy, but James had suffered a severe reverse in his private fortunes in 1746, and the perquisites of his sub-office were doubtless useful to the family in Glenduror.

With James, Glenure had no quarrel. They were related by blood, if tradition speaks truly, and had been friends in past days in spite of clan rivalries. Even previous to his actual appointment Glenure had written to James asking him to tell the tenants to be ready with their rents,\* and it is plain to all unprejudiced readers that at no stage did he perform in a vindictive spirit his unpleasant duties as factor. For some time James harboured no severe antipathy to him, but outside events were destined to exercise an evil influence, and to disturb the pleasant relationship of the two men.

Two years passed, and James, without interference from Glenure, seems to have seen to it that Jacobites were retained as tenants; and he continued to pay to the Ardshiel family, probably by the hands of Allan Breck, the bonuses provided by their affectionate clansmen. Then, when one might have expected permanent goodwill to have been established, the first sign of trouble appeared. Prior to the May term in 1751, for reasons not recorded, the factor asked his assistant to yield the farm of Glenduror. James complied, and removed to Acharn. Glenduror passed into the hands of Ballieveolan, another member of the rival Campbell clan. Thus the seeds of dispeace were sown. Probably the reason of the ejection and consequent estrangement are to be found in the political situation at the time. The authorities were well aware that the Jacobites were intriguing for another rising. "Pickle," the master traitor and informer, was supplying his employers with grounds for uneasiness. A foreign invasion was considered possible. Such was the general position, and there were also local incentives for anti-Jacobite activity.

Barcaldine, and even Glenure himself, was suspected of undue leniency. Rumours concerning them had reached even the Royal ears. The old relationship between the parties still subsisted so far as outward appearances showed, but Glenure, evidently to put himself right with the authorities, thought it

\* See p. 213.

## James Stewart.

expedient to alter to a further extent the position of his Jacobite assistant. Before the removing term he tells James that "something has occurred which makes it necessary that you do not set any part of Ardshiel, Auchindarroch, or Acharn till I see you after my return from Inveraray."

A man of Saxon blood would have accepted the situation after making some forcible remarks as to the sanity of his employer. A heated interview would have ended the temporary disagreement, or cut off the relationship altogether. But James was a Highlander, possessed of all the characteristics of his race. As his speech from the scaffold on a later day had all the inspiration that Celtic fire can supply, so his attitude in this blink of adversity was marked by the retiral into self, the brooding, the dour suspicion to which those of Celtic blood are prone. For many months he was sullen-hearted under the only kind of "gloom" that is recognisable outside the pages of romance. He had reason to know that Glenure was not at heart his enemy. That Glenure had many virtues he had often admitted. Yet the grim devil of distrust had this strong man in grip, and succeeded in distorting his vision. Though James maintained diplomatic relations with Glenure, the memory that the factor was a Campbell and a Hanoverian, so often forgotten in former days, was now the most insistent of his thoughts. Only when his blood was warmed with liquor did his suspicions find utterance; but his son Allan was less careful. On 1st April, 1751, this young man wrote to Glenbuckie complaining bitterly of Glenure's conduct. He said, "It will be a dear Glen to them or" (*i.e.*, ere) "they shall have it."

Allan Breck, like a stormy petrel, was hovering around from time to time, pursuing his duties as mediary between the Appin people and their chieftain in France. In 1749, in 1751 (just at the time of the eviction from Glenduror), and again, early in 1752, he came over from France and swaggered around the country, "a desperate foolish fellow," "a tall pock-pitted lad," with "very black hair," and wearing "a blue coat and metal buttons and old red vest and breeches of the same colour." Another contemporary description of him, that which was supplied during the hue and cry, is in these terms—"About 5 feet 10 inches high; visage much pitted with the smallpox, a little in-kneed, round-shoulder'd, and about thirty years of age, wears a blew coat,

## Allan Breck.

Britches, and Vest, a Hatt and Feather, but his Cloathes he may have chang'd." He visited Edinburgh at times, and lodged with a clansman named Hugh, at the back of the Fountain Well. He had to live a bat-like existence, staying indoors when the sun was high, for fear of arrest as a deserter; but he contrived, nevertheless, to spend his money. In 1750 he left Edinburgh, leaving a bill upon James as payment to his landlady. This bill the long-suffering guardian paid.

On Hogmanay of 1751 the change-house of John Breck MacCombie at Kintalline was the scene of a meeting between Glenure, James Stewart, James Stewart of Ardnamurchan (his uncle), Ballieveolan, and young Ballachulish. The liquor was passed round, and the roysterers were in no hurry to separate. At last, Mrs. Stewart sent a man-servant to bring her husband home. He found the company talking volubly in English, so he could not say of what they spoke; but later the talk grew louder, and the faithful servant and some other men had at last to carry James and his uncle out of the room. They demanded to be allowed to return, but were pacified when young Ballachulish came out to tell them that C. . . . promised, "on his honour," to visit them at Acharn next day. Glenure was as good as his word, and ate his New Year dinner at the house of the man who, ere the next New Year came round, was hanged as being the instigator of his murder.

Whatever may have been the nature of this old-time dinner party, it did not end the friction. The truth is, that Glenure was still under suspicion at headquarters, and therefore performed his duties under difficulties. The manuscript records of the Barons of Exchequer make this clear. In the summer of 1751 there had been trouble regarding the letting of a farm in Mamore. Glenure had asked for special instructions about the matter, and was told to give it to the highest bidder at a public roup. There were two men who had cast greedy eyes upon the place—Maclauchlane of Greenhall and Cameron of Fassifern. The latter gave the best bid, and Glenure proceeded to give him possession. Maclauchlane then presented a petition to the Barons, and made the most, there can be no doubt, of Glenure's blood relationship to the rebel Camerons. The consequence was that Glenure, on 21st July, 1751, was "severely reprimanded" for having let this farm to Fassifern; but the

## James Stewart.

matter did not end there. Rumours of alleged leaning on the part of Glenure towards the Jacobites again reached the Treasury in London, for Mr. Pelham writes on 5th November, 1751, "I find that Campbell of Glenure and Campbell of Barchaldine, who is Glenure's brother, are not only Highlanders, but are related in some degree to the Camerons and other Rebels, and that there is very good reason, from good Intelligence, to suspect the Loyalty of both these factors themselves. If this is the case, as I believe it will be found to be, I am of opinion proper persons should be appointed factors to the estates where they are now concerned, in their rooms." Lord Glenorchy took up the cause of his clansmen (yet another instance of the part played by clan feeling), and presented a memorial in their favour. Its terms were confident,\* and it had some effect. Some correspondence followed, including a letter from the Barons on 9th April, 1752, saying, "As to the two Campbells, we cannot, upon the strictest enquiry, find the least suspicion of their disloyalty."

One result that emerges clearly from this trouble is the fact that a number of Jacobite tenants on the Ardshiel estate received orders to remove at Whitsunday, 1752. Whether these orders were due to an effort on Glenure's part to rehabilitate himself, or were issued by the direct commands of the Barons, is not apparent from the Exchequer records; but there is no doubt that James Stewart took up the tenants' cause with characteristic zeal after Glenure had obtained the Sheriff's authority to eject them. James went to Edinburgh and submitted a memorial, stating the facts, to Baron Kennedy,† who promised to bring the matter before the other Barons at the next Exchequer Court. No sitting of the Barons' Court is chronicled between 14th February and 3rd June, except one on 9th April, the very day James arrived, so it was impossible for him before the May term to get Glenure's intentions checked from that quarter. He, therefore, on 18th April, presented a Bill of Suspension to Lord Dun.† Answers were ordered and lodged, and the bill was refused by Lord Haining,† on the 5th of May, after James had gone back to Appin.

Glenure hurried from Edinburgh in consequence of the proceedings. He left the city on Thursday, 7th May, and he

\* Appendix, p. 345.  
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† Biographical Notes, p. 326.

## The Murder.

must have ridden hard, for he was in Appin two days later. He spent the Sabbath at Glenure, and on Monday set out for Fort-William.

On Thursday, the 14th of May, he began the return journey from Fort-William to Appin with a party of three, intending to pass the night at the inn at Kintalline, near the scene of the intended evictions, and to carry them out the next day in legal form. A letter afterwards written by his nephew says that Glenure had been "several days ago forewarned," but his suspicions seem to have been directed against the Camerons rather than against the Stewarts, for we read that when he crossed the Ballachulish Ferry between four and five o'clock in the afternoon he began to feel more comfortable. "I am safe," he remarked, "now that I am out of my mother's country."

The company carried "not a nail of arms among the whole" and stepped out confidently towards Kintalline. The laird of Ballachulish,\* a Stewart, accompanied them to the limits of his estate. Glenure and his men formed a scattered band as they walked along the mountain road. Donald Kennedy, an Inveraray Sheriff-officer who was to conduct the evictions, was the foremost of the party. Next came Mungo Campbell, an Edinburgh lawyer who had come north "to use his influence"—if a Campbell could possess any in such a matter—in soothing the passions of the ruffled Stewarts, and also to assist at the evictions. Mungo was a natural son of Glenure's brother Barcaldine. He was just entering manhood, and he seems to have been even then gifted with courage and initiative. Little did he dream that this day was to be the turning point in his career, when the current of his life, hitherto a placid one, was to be turned into new channels. His blood was destined to run faster in many moments of danger, and on a far distant date to be shed for his country in North America. Glenure rode behind the Sheriff-officer and the lawyer, and after him came the last of the party, his servant, Mackenzie.

Ballachulish Ferry had just disappeared from view, and the hills of Morven, with Kintalline and Ardshiel in the middle distance, were becoming prominent, when suddenly, at a point in the road, at the wood of Lettermore, a shot rang out,

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\* Biographical Notes, p. 327.

## James Stewart.

and Mungo Campbell" heard Glenure exclaim, "Oh, I am dead!" The nephew turned to seek the assailant, who at once ran up the hill from the road, and, as the record of Mungo's evidence at the trial says, he "saw at some distance from him a man with a short dark-coloured coat and a gun in his hand going away from him; and as the deponent came nearer him he mended his pace, and disappeared by high ground interjected betwixt him and the deponent; and he was at so great a distance that he thinks he could not have known him though he had seen his face." A private letter written by Mungo on the 23rd of May\* gives a similar account of the tragedy, though there are a few minor discrepancies in the two narratives.

Glenure was mortally wounded by two bullets, each of which entered near the spinal cord and emerged in front of the abdomen. Showing a pluck that was wonderful in a man dying of such painful wounds, he called to his nephew to "look to his own safety," and retained his seat on horseback for a few minutes. Then, with a feeble attempt to open his shirt and examine his wounds, he died.

In these few sentences we have the whole primary evidence offered by the Crown witnesses at the trial as to the details of this assassination.

Mungo Campbell's letter gives an interesting account of the events that immediately followed. The murderer's work had been accomplished; seeking no other victim, he left the three remaining travellers to take their own course. Mackenzie, the servant of the dead factor, was sent to bring help. Mungo, and the Sheriff-officer who was in a state of mortal fear, remained by the body. They were apprehensive of attack, but it did not come. For an hour they kept watch in the gloaming, but Mackenzie did not reappear. He had made hot haste to Achindarroch, distant about ten minutes' ride, in search of Ballieveolan, but he was there referred to the farmer at Acharn, and thither he went. James Stewart learned from him what had happened on the road at Lettermore.†

It is certainly strange that James did not at once proceed in hot haste to Lettermore. Other Jacobites did so later, with

\* Appendix, p. 304.

† For a traditional account of this incident see Appendix, p. 304.



The old road through Lettermore (now only dimly defined) and a tree marking the spot from which, according to tradition, the assassin shot Glenure.



## The Hue and Cry.

the concern which the warm-hearted Highlander almost invariably exhibits when a sad event has happened. Whatever may have been his reason for satisfying himself with a mere expression of regret, his conduct at this juncture told heavily against him on a later day.

In the meantime, Mungo Campbell and the Sheriff-officer had become impatient. The latter declined to leave his companion, either from fear of the wrathful Stewarts or from a desire to be with the second Campbell in the event of a further attack. At last he was induced to go back to Ballachulish, and ere long he had returned with the laird and the people "in shoals." That Mungo did not give them a hearty welcome is evident. "But pleased at everything had I shared my uncle's fate," are the words he used in writing of them in his letter. He took no counsel with any of them, but removed the body in a boat to the change-house at Kintalline, the scene of the Hogmanay revels. From there it was taken to Glenure, and on the 26th of May it was laid in the Barcaldine burying-ground at Ardchattan Priory, Charles Campbell, then laird of Ardchattan, being Glenure's brother-in-law.

Who had fired the fatal shot? became the question of the hour throughout Scotland. Two men had openly declared their intention to be "fitsides" with the deceased. One was Sergeant Mor, the famous Cameron outlaw,\* and the other was Allan Breck Stewart. If the murder had been committed on Cameron soil, the sergeant would have been the suspect, but Glenure had died on Appin ground, and suspicion fell on Allan Breck Stewart, who had been in the neighbourhood for some time, and had been talking and acting in a threatening manner. The hue and cry at once arose. The men of Fort-William garrison were stirred into unwonted activity, and Allan soon found himself, like his Prince after Culloden, a hunted fugitive with a price upon his head.

But already the idea that this had been no private act of vengeance by an irresponsible ruffian had gained wide currency, and it came to be regarded as a deed for which the Jacobites generally, and the tenants on the forfeited estates of Ardshiel in particular, must be held responsible. Mungo Campbell says

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\* Biographical Notes, p. 326.

## James Stewart.

in the letter already referred to, "There is reason to believe that there was more than one on the spot, and circumstances occurred in convincing us that there were numbers of Lochaber as well as Appin Potintates in the accomplishment." On 15th May Duncan Campbell, a brother of Glenure, writes, "Our brother Glenuir was most barbarously murdered by some damnd villans who fired att him out of a bush." All the writers of the other unpublished private letters concur in holding this opinion. A proposal, indeed, was made (and negatived by the Lord Justice-Clerk in a letter dated 22nd June) that a free pardon should be given to Allan if he gave himself up and exposed the plot.

Even in those days evil news made light of distance. The tale of Glenure's violent death found many bearers, and in a few days it was known throughout the kingdom. We find Wolfe, the future hero of Quebec, then a young officer at Fort-Augustus, writing to his father on 28th May in these terms—"You have heard of the strange murder that was committed a fortnight since by two Highlanders at the instigation, it is believed, of a lady, the wife of a banished rebel. The gentleman was an Argyllshire man, and factor upon some of the forfeited estates. Several men are apprehended under suspicion, but I'm sure it will be difficult to discover the actors of this bloody deed. The factor intended to remove old tenants and to put others in their place, and this is supposed to be the reason for killing him" ("Life of General Wolfe," by Robert Wright; Chapman & Hall, 1864, p. 212).

The *Scots Magazine* for May, 1752, says, "One Allan Breck Stewart, a French cadet, is suspected of this murder, and means are used to prevent his escape. About twelve persons have been taken up on suspicion." Search parties ranged Appin, Glencoe, Rannoch, Perth, and Athol, but the soldiers and other searchers did not run the wily Allan to earth, though many rumours regarding his whereabouts went round the country. On 10th July a zealous non-commissioned officer of the Royal Welsh Fusiliers, stationed at Annan, in the Border country, arrested a man 5 feet 10 inches in height, in-kneed, and pock-marked, and carried him off to Carlisle jail, thinking that he had secured the redoubtable fugitive himself. Mungo Campbell, who knew Allan by sight, went off post-haste to identify the prisoner, but found that the pock-marked man was not Allan.

## The National Aspect.

The twelve persons referred to as arrested included James Stewart and his sons and servants. James and his son Allan were taken to Fort-William on 16th May. Failing to secure Allan Breck, the Crown authorities, the military, and the Campbell leaders seemed to be determined to punish some one. "My God! how shall I be able to be revenged for this heaviest stroke that over I felt? How shall I ever be redrest?" one of the victim's brothers wrote to another. Colonel Crawford, who was in command at Fort-William, was very active in the matter, and Glenure's nephew writes, three days after the murder, that the colonel "acted the part of a warm, interested friend." The Barendine family had suffered an acute, personal loss. Every circumstance was presented in an aggravated form, and blood for blood they determined to have at all costs. There can be no doubt that the zeal of the private prosecutors, supported by the Crown, far outran what might be considered the limits of rectitude and fair-play. From the moment their operations began very high-handed methods were used against the suspects. It may be admitted that in an unsettled country strong measures were necessary. Even the Stewart leaders, who were above suspicion, were not inclined to assist in the inquiry. The power of the law had to be forcibly exhibited, or other outrages might have followed. It has also to be said that the Ministry had lately entered upon a policy of leniency in the Highlands, which had roused strong opposition in Parliament, especially in the House of Lords. The Duke of Bedford declared that if gentle methods were used in the Highlands rebellion would become a national malady. The Government also feared that a spark like this Appin murder, unless ruthlessly extinguished, might bring to the restless Highlanders the opportunity for which they longed, and that "the hour and the man," with arms from the Continent, might be upon them ere many weeks were gone. In consequence of the political situation in London and in the north, the Ministers no doubt felt that they must exhibit great energy in this Appin matter; but there can be no full excuse for the methods employed against the suspects, and especially against James Stewart. From the very moment of his arrest, James was presumed to be guilty, and he was treated neither with mercy nor with justice. His house was searched without a

## James Stewart.

warrant in defiance of his rights under Act of Parliament. He was kept in strict confinement, and was allowed neither legal nor lay assistance in preparing his defence. While one's sympathy goes out towards a man so cruelly treated—and nothing can palliate such gross injustice—it is only fair to state that he seems to have given Colonel Crawford genuine grounds for suspecting him to have been closely allied with the murderer, for the colonel writes on 22nd May, "The prevarications and conduct of James Stewart appear to me every day blacker." Three days previously James Stewart had "papered" Allan Breck in a letter to Mr. John Macfarlane, W.S.,\* and had shown some desire to assist the Crown authorities; but a man in his position cannot be seriously blamed for attempting to throw dust in the eyes of his captors, and especially in those of this colonel, who had been so zealous against him.

The writer of the "Supplement," whom the Campbells afterwards dubbed "a scandalous libeller," suggests that the reason of James's close imprisonment was a fear that he would get skilled assistance and take steps to have his case tried in Edinburgh rather than among his enemies at Inveraray. His rights in this matter were these:—Under an Act of 1701 (chap. 6), a prisoner whose offence was not bailable, and who heard nothing about the date of his trial, was entitled to "run his letters," that is, apply to the Court to have his trial brought on. The judge was bound to issue (within twenty-four hours) instructions to the prosecutors compelling them to bring on the trial within sixty days. If the trial did not begin within that time, the prisoner was entitled to be set at liberty. Thus, if James had been able to run his letters, the case would have had to be heard prior to the Inveraray autumn circuit, and would probably have been tried in Edinburgh. The exercise of those privileges would have secured fair-play for the prisoner, but it would have defeated the aims of the Crown. If the credit of the Government was to be maintained, and the vengeance of the Campbells satiated, some one must hang for the murder of Glenure. There was no evidence that would induce an Edinburgh jury to hang any man, so James must be deprived of the chance of an Edinburgh trial. He must be tried at Inveraray. Alexander Robertson, one of the opposition agents

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\* Appendix, p. 211.



The Cairn at Lettermore which marks the spot where Glenure was murdered.



## The Prisoner's Hardships.

in the case, writes on 27th June, "As to the trial, I think it is now judged most proper to be carried out at Inveraray." The words "most proper" are significant enough.

A public subscription was being organised in Edinburgh for the prisoner's defence, and the authorities were doubtless alive to this indication of the direction that public feeling was taking. On 16th June Lord Breadalbane writes, "I hear that there is a subscription made at Edinburgh to support the prisoner. 'Tis amazing that anybody can be so imprudent (not to call it a much worse name), and when such things are heard of at London, is it to be wondered at that the English called Scotland a Jacobite country? The hurt done to the country in general by such behaviour is greater than many people imagine." Thus we find a great nobleman so obsessed by political notions that, because a murder was committed for reasons indirectly connected with Jacobitism, he must thus prejudge the case and consider all its aspects in terms of faction. Undoubtedly, to such as he, Inveraray was the "most proper" place for the judging of James Stewart.

Mrs. Stewart made every effort to secure an interview with her husband, but she only succeeded towards the end of June. Charles Stewart,\* the prisoner's first agent, was asked to insist on the prisoner's rights being granted him; but that miserable weakling for the second time declined to offend the authorities, and allowed his clansman's cause to suffer by his timidity. A village Hampden appeared, however, in the person of young Ballachulish, who demanded from the Campbell leader, Barcaldine, a copy of the warrant for Stewart's imprisonment. To this request Barcaldine is said to have replied that if his visitor did not mind his own business he also would be imprisoned; but young Ballachulish was not in a mood to be put down by such extrajudicial threats. He wrote to Colonel Crawford, and asked the privilege of seeing the accused in presence of any officer whom the colonel might select. This new request was as peremptorily, but more politely, refused. And so the foul injustice went on. Nor were the friends of the murdered man above using their influence in judicial quarters. Sheriff Duncan Campbell writes to his brother Barcaldine on

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\* Biographical Notes, p. 328.

## James Stewart.

2nd July, 1752, "It is more than time you or I were in Edinburgh, especially while the Earl " (of Breadalbane) " and Duke of Argyll are there together." On the other hand, there are, in the unpublished letters of the Campbells, assertions that the Stewarts were threatening to shoot one of the probable witnesses, John Breck "the bouman," and that the Ballachulish family had offered him bribes "if he stood by the Stewarts."

At last, on 6th July, about seven weeks after his arrest, the monotony of the prisoner's loneliness was broken by the receipt, for the first time, of a warrant dated 17th May, authorising his incarceration. Later in the month he was allowed to take the air in the prison. His sole means of communicating with the outside world was through the barber who came to shave him; and even the gift of a shilling to this barber, with an innocent message to his servants, who were still in the prison and in irons, was coloured at the trial for use against him. The message ran—"To say nothing but the truth, to keep their minds to themselves, and he would take care of them."

It might be supposed that as he was now a prisoner, legally detained, with, presumably, a definite charge hanging over him, he would be supplied with a copy of the indictment against him, and be allowed to prepare his defence. Even this was denied him. Day after day slipped past (during weather described by one letter-writer as "most confounded cold"), and he was still ignorant of the charge; still precluded from finding agents or witnesses; still as far from finding simple justice as if he had been a victim of the Spanish Inquisition or a tenant of the Bastille under *Lettres de Cachet*.

Young Ballachulish was still standing by his friend, so far as that was possible. The unpublished correspondence contains an undated letter from Alexander Campbell, Barcaldine's son, stating that young Ballachulish had gone to Balechalen and Annat "to concert matters for carrying on this trial," and that he was "the only agent employed by the prisoners both to levy money and for every purpose that regards their interest." He goes on to make the remarkable proposal that young Ballachulish should be arrested, and says, "I have writ Achalader to this purpose, and advise his taking up young Balechelis by his own warrant, and if he is taken on his way home I daresay he will have some papers that may throw light into what they

## The Lawyers.

are about." Such were this young man's views of justice. A man was to be arrested, not because there was any charge against him, but because he was believed to be the agent of one who was about to be tried for his life, and because that agent's absence from the countryside would help the Crown prosecutors. Mungo Campbell proposed that Fasnacloich should be apprehended, and that all the tenants should be warned to remove, in the hope that this threat would make them less reticent. Colonel Crawford approved of this proposal, but very judiciously declined to put his consent in writing, and the scheme was never put into operation. From Duncan Campbell, himself a Sheriff, came the suggestion that Mrs. Macdonald of Glenco should be "taken up." Clearly, the jail had strange uses in those cruel days. It was not merely a home for criminals, but a handy house of correction for persons who were likely to be unpleasantly useful to an accused man, and also a place of hardship, whose rigours might cause a tongue-tied witness to become communicative. The thumb-screw had become unfashionable. But surely some more humane torture could not be denied to influential folk who had cause to use it.

The friends of James of the Glen at length secured an Edinburgh lawyer—Mr. Stewart of Edinglassie—an agent of energy and ability, who immediately began his duties in preparing for the defence; but it was alleged that here again the enemy had been at work, and that a larger number of leading counsel than would be required by the prosecution had been retained in order to prevent their appearing for the prisoner. The statement of Mr. Walter Stewart (one of James's counsel) at the trial, that "the bar had been in a manner shut against this pannel; all the old and experienced counsel, though not brought to maintain the charge against him, have been retained, from giving him their assistance; otherwise, in all probability, I had not now been employed to open his defence," may be discounted in some degree on the pardonable plea of modesty. At any rate, if the effort was made, it was not altogether successful. And that is not surprising, for there were men of Jacobite leanings at the bar, and at least one on the bench. In 1749 a complaint had been made to Parliament of "three-fourths of the petty lawyers in Scotland being Jacobitishly inclined, and yet

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those were the people employed by the nobility and gentry.”\* Public opinion had not altered greatly. It may be gathered that many would have eagerly taken up the prisoner's case had it been possible to employ them.

When the law was at last moved in James Stewart's favour it was a clansman who appeared for him. Immediately before 20th August, Mr. A. Stewart presented to the Lord Justice-Clerk, in James's name and those of the other prisoners, a Petition† praying that access and admission might be given “to all persons who shall desire to see and converse with your petitioners for their defence or any other lawful affairs.”

The presentation of this petition probably followed on an incident that is recorded in the “Supplement.” The details of the charge were kept profoundly secret, but a stranger “providently” picked up a proof of the indictment and conveyed it to the prisoner's lawyer. On 20th August the petitioners' request was granted so far as James was concerned.

On the following day criminal letters were served on him.

The issue was now clear—James Stewart was charged with being the *abettor* of Allan Breck, who was charged in the same indictment as the actual murderer of Colin Campbell, and the trial was fixed to take place at Inveraray on the 21st day of September in that year 1752. Every circumstance seemed to conspire against James. There was now the difficulty of securing counsel who would make the long journey to Inveraray during the vacation, and who would act against the Government in a case involving keen political feeling. This caused delay in starting for the scene of the trial. The time necessary for travelling consumed valuable days, and the date of the trial was near at hand before anything definite could be done. It also happened that in this month (so valuable and so short for a man in Stewart's position) the Gregorian Calendar first came into use in Great Britain, and that the 3rd of September became the 14th. When the agent at last reached Argyll he had to go first to Acharn to examine his client's papers, and in consequence counsel and agent did not hold their first conference at Inveraray till the evening of Monday, the 18th of

\* Chalmers' MS. Adv. Lib. 35, 6, 4, 1, 588.

† Supplement, p. 335.

## The Bench.

September. Apart from the agent's accidental meeting with the prisoner at Tyndrum some days previously, when he was being escorted by soldiers from Fort-William to Inveraray, no consultation between lawyers and accused had been possible.

The reader will naturally suppose, that, in these extraordinary circumstances, the prisoner's counsel, when they reached the county town, were at once admitted to see him. Nowadays all prison rules would be set aside to secure this end, when a man's life was hanging in the balance. At Inveraray they had different methods. Mr. Walter Stewart said at the trial, "when his counsel came to this place and wanted to see him we were told that none were to be admitted without a warrant from the Duke of Argyll." As a matter of fact, the consultation of the lawyers took place on the Monday, and they applied for admission to the prisoner on that day. It was only on Tuesday that this was granted, and yet on Thursday morning Stewart was to take his place in the dock.

On Thursday, 21st September, the trial began in the old Inveraray Court-house, now used as the Argyll estates offices. It was seen that the bench was occupied by three judges—the Duke of Argyll, Lord Elchies, and Lord Kilkerran. The two last named were there in the ordinary course of business. Regarding the ability of Lord Elchies as advocate and judge there is room for one opinion only—he was learned and astute; but of his freedom from political bias there are grave doubts. When he died, in 1754, the *Scots Magazine* described him as "leaving behind him the character of an honest man, a sincere friend, an able lawyer, a disinterested judge, and a zealous wellwisher to our present happy constitution." Mr. Ramsay, though he had no love for Jacobites, agrees with this estimate of Lord Elchies' qualities as a private gentleman, but he says, "He was, if anything, too keen a Whig. . . . No wonder that he should even be more execrated by the Jacobites and their friends and the suffering families than Lord Milton himself. . . . The heat and keenness of his temper were no less conspicuous in the Justiciary Courts, where, in most cases, he exerted himself with most indecent fervour to get the culprits convicted" (*Ochtertyre Papers*, vol. i., p. 93).

## James Stewart.

Of Lord Kilkerran, the junior judge on this circuit, Lord Woodhouslee once said, "The probity and integrity of his character entitled him to respect and veneration." In those days the circuit judges were in the habit of making merry at times, but we may take it that the two who assisted Argyll were exceptions to the general rule, for Mr. Ramsay records the saying of Charles Cochrane (a noted wit, who was not afraid to banter the Senators of the College of Justice to their very faces), that "of the circuit judges there were two, Lord Justice-Clerk Erskine and Lord Minto, who *ate*; two, Stricken and Drummore, who *drank*; and two that *neither ate nor drank*, Lord Elchies and Lord Kilkerran."

Probably some of the lay hearers of the proceedings imagined that the Duke occupied the chief seat on the bench by reason of the ancestral right of the Argylls to dole out the law at Inveraray, but his presence was due to his possession of a higher dignity than that of the old heritable judges. He was there as Lord Justice-General of Scotland,\* having held that high, but then more or less honorary, office since 1710.

We may presume that had James Stewart been tried by the two ordinary judges alone, the Blindfold Lady with the Sword and Balance would not have been a total stranger to the Court that day; but Argyll was there to regulate the trial, and behind him there hovered no angel of justice, but the loathsome fiend of judicial bias. Had he left the trial of this prisoner to take its course in his absence† he would simply have done his duty. Had he used his great influence to get this member of a rival clan set apart for trial before a south-country jury the Lord Justice-General would have performed a noble act. As the miserable record stands, he sets precedents at defiance, and went in person to Inveraray to try this man, who was both a Stewart and a Jacobite, with a jury of Campbells and Hanoverians.

The only serious defence of such a line of action appears in a pamphlet published in Edinburgh in 1823 by "a historical dis-

\* See Appendix, p. 315, for an account of this office.

† Mr. Hugo Arnot states in his "Criminal Trials" that "in this case (James Stewart's) alone did a Justice General and a Lord Advocate make their appearance on circuit."

## The Duke.

putant styling himself 'Amicus,' whose desire was to contradict certain opinions expressed by General Stewart in his 'Sketches of the Highlanders.' " This writer says, "James Stewart's trial took place very soon after 1748, and after the 1745, when the new practice may not have been considered as established, and when the disorders produced by the Rebellion were not fully settled. James Stewart's crime arose out of these disorders, and being committed on one of the King's factors while in the execution of his duty, claimed a greater share of alarm and anxiety on the part of the Government than those crimes which are most commonly the subject of trials, and may very naturally have occasioned (in order to secure the greatest possible regularity and impartiality in the proceedings, as well as the greatest solemnity and awe in the eyes of people), a recommendation to Argyll, the Justice-General residing on the spot, who was a regularly bred lawyer, and to whom the King's authority had been recently delegated, after his heritable jurisdiction as Justice-General had been done away with, to attend the trial as the head of the Supreme Criminal Court " (p. 30).

If the Government in those bitter days sent a MacCailean Mor to secure "the greatest possible regularity and impartiality" in the trial of a Stewart for the murder of a Campbell, they had little knowledge of the slowly-dying spites of the Argyllshire clans. Whether Argyll was a willing or reluctant judge in the proceedings that followed, the reader will soon decide.

The counsel for the prosecution\* were the Lord Advocate, William Grant of Prestongrange, who had been chief law officer to the Crown during the strenuous days that followed Culloden, a man of high character and great ability; James Erskine, then Sheriff of Perth; Robert Campbell of Asnich; John Campbell, younger of Levenside; and Simon Fraser, the Master of Lovat, who, it is said, was now making his first appearance as an advocate. It was he who, being the son of the notorious Lord Lovat of the '45, had already done some work in history-making by leading the Clan Fraser during a part of the Rebellion, but, who, after performing a kind of

\* Biographical Notes, p. 321.

## James Stewart.

penance by a brief career at the bar, became a brilliant officer in King George's army.\*

The defence was in the hands of George Brown of Colston,† Sheriff of Forfar; Thomas Miller, Sheriff of Kirkcudbright, one of the ablest and noblest men that Parliament House has ever produced; Walter Stewart, younger of Stewarthall; and Robert Macintosh, an able but very eccentric lawyer, whose reputation is thus described in the Ochertyre Papers as "one of those extraordinary characters in the law that occur but once or twice in an age without benefiting themselves or society." The prisoner's solicitor, on whom the stress of the case fell most heavily, was the before-mentioned Mr. Stewart of Edinglassie. No judge could have wished to find a better stocked bar. Men of sterling personal qualities and of great learning and ability as pleaders were ranged on each side of the table.

Mr. Walter Stewart opened for the accused, with a plea on the relevancy. He told how the house at Acharn had been searched three times by the Campbells attended by soldiers, and without any warrant. "These are hardships, my Lord," he continued, in an eloquent passage, "which, thanks be to God, meet with no encouragement in this, now a free, country. The time was, indeed, when the feeble law was unable to protect the innocent, when the rules of law were broke to pieces by the ruffian hands of power. Then our unhappy country groaned under the intolerable yoke of arbitrary power. Then was scarce the form of a trial. The best, the greatest of our country, even an Argyll, fell a sacrifice to the will of tyranny; but now, my Lords, the days which our fathers wished to see, and did not see, we have the happiness to enjoy. A fair trial, which the noblest could not obtain, the meanest are now entitled to, under the protection of laws, guarded by a Government ever watchful for the good of its subjects, under which

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\* These gentlemen were rewarded with the following fees, paid by the private prosecutors and afterwards recovered from the Exchequer:—The Lord Advocate, £105, Mr. Erskine, £30, Mr. Fraser, £20, Mr. John Campbell, £20, Mr. Robert Campbell, £10. Mr. Alston, the Crown Agent, received £50, and the other agents, Mr. Robertson and Mr. Watt, "for disbursements and for their own pains," £251 9s. 3½d., and this seems to show plainly that the preparation of the case was left almost exclusively in the hands of the private prosecutors.

† Biographical Notes, p. 323.

## Arguments on the Relevancy.

the keenness of private prosecutors will meet with no countenance or encouragement. The pannel, enjoying the privileges of every free-born Briton, is now to stand trial before the judges and jury of his country, and as his judges will show the greatest impartiality, he expects the same from the gentlemen of the jury. They will judge of the proof brought before them, having in their eye the example of Almighty God, by whose holy name they have sworn to do justice, before whose awful tribunal there is no judgment formed from names or personal prejudices, but every man is judged according to his works." Such remarks call to mind the old custom in use at Highland communions of "fencing the tables," and they should have had some effect on the subsequent proceedings; but they had none. Mr. Stewart concluded by raising a legal "plea in bar of trial"—that the trial of an accessory should not take place until the principal had first been found guilty. At that time the law on this point was doubtful, and Mr. Stewart did right in using every endeavour on behalf of his client; but the practice has since been uniformly contrary to his contention, and it must be admitted that it would be dangerous if undoubted accessories were allowed to go free merely because the leading actor in a crime had been clever enough to elude his pursuers. James Stewart suffered no injustice in being tried before Allan Breck was arrested. The injustice that was to follow had other foundations.

Mr. Robert Macintosh followed in support of Mr. Stewart's arguments, and even emulated that gentleman in his endeavours to find a humane region in the heart of Argyll by referring to him as "the father of his own country, as he justly appears to be in this part of the kingdom." Next followed that oft-told tale which has been, and ever will be, a feature of addresses to juries in cases of this kind—a dissertation of the elements of circumstantial evidence. "Must it then depend upon guess-work? Is it to be tried upon questionable evidence? Or is a jury to be persuaded into it by art? No; there must be the most palpable and incontestable proof, and unless the evidence is full and plain, no credit, I will venture to say, can be given to so black, so detestable, and so unnatural a charge. It would almost require to see the blood reeking upon the hands of the guilty. But what have we here? Presumptions built

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upon presumptions; suspicions, and these suspicions supported by others; suspicions, without proof, nay, disproved." An analysis of the proposed evidence and a gallant attempt to support Mr. Stewart's plea in bar were the other features of a speech that justified the attribution of "talents," which even Mr. Ramsay did not deny in his bitter description of this advocate.

The reply of the prosecutors was opened by Mr. Simon Fraser of Lovat, who began by stating that he appeared for Mrs. Campbell of Glenure and her infant children. (It is noteworthy that in the old record of the trial the prosecuting counsel are described, perhaps inadvertently, not as "for the Crown," but "against the pannel.") It is recorded that Mr. Fraser's appearance at Inveraray was primarily due to his knowledge of the Gaelic language, but the opportunity of doing service to the Government was doubtless very welcome to him. His legal experience had been extremely limited. Indeed, the fact of his ever having donned the wig and gown is only very incidentally mentioned by Mr. Mackenzie in the Fraser history, and no reference whatever is made to this trial. The Master of Lovat had his father's cuteness and command of language, and he now displayed a natural gift of casuistry that would have pleased his villainous parent had he been alive to admire it. While his remarks were forceful, it may be inferred that he had not made the supplication "*Da lucem, Domine*," which should be in the mind of every lawyer who has to support a charge of homicide. He made his assertions of facts as confidently as if he had been a witness, instead of a pleader. When he came to deal with the plea in bar he quoted no authority, but averred that, "It signifies as little what is the law of neighbouring nations, as what was once our own law, if custom, the justest of all legislators, directed by common sense and equity, has now enacted the contrary."

An opportunity for a supreme feat of casuistry now offered itself to Mr. Fraser. It was proposed to use against the prisoner the judicial declarations of his wife and children. The rule was then and until recently that those relatives of any accused person could not be called as witnesses either for or against him. The use of those declarations was thus open

## The Master of Lovat.

to the objections—(1) That the evidence of persons who were alive and available for oral questioning could never in Scotland be received in writing, since such a course prevented cross-examination; and (2) that in any case such evidence—even when given verbally by Mrs. Stewart and her family—could not be used against their husband and father. The prosecuting counsel, however, were determined to use those papers, and Mr. Fraser supported their intentions in the following terms:—"It is confounding things to say that this is making the prisoner's wife and children witnesses against him. The declarations will not be produced to prove the truth of anything contained in them, of which they would not be legal evidence. They are only to prove that the persons who emitted the declarations averred these things." No more execrable arguments have ever been used in a Court of Justice. Here we have the son speaking with the father's voice. Old Simon would have clasped his son to his bosom had he been in Court that day. Yet, in fairness even to so unfair a pleader, let us remember that these were the words of an immature and ambitious youth. They were not the saying of the Simon Fraser of later days, who wore the King's uniform with honour, and served his country and the Highland race both long and well.

The next speech was made by Mr. James Erskine, and it stands in happy contrast to that which preceded it. Mr. Erskine stated his case moderately and with marked fairness. He was followed by the Lord Advocate who explained that owing to the gravity of the crime committed at Lettermore, and its bearing on Highland policy, he had determined to conduct in person the prosecution following upon it. By a learned argument he combated the suggestion that James Stewart could not legally be tried until Allan Breck had been dealt with.

The debate was concluded by a speech from Mr. Miller, who strongly upheld the plea in bar on behalf of the prisoner; but his efforts and those of his colleagues proved unsuccessful. The judges then remitted the pannel, with the libel as found relevant, to the knowledge of an assize. This interlocutor marked the close of the first day's proceedings, and the Court adjourned till the following morning (Friday) at six o'clock.

When the judges resumed, their first business was the choosing

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of a jury. In accordance with the practice then in use, the judges made choice of fifteen jurors from the thirty-four cited. The ballot system was not then practised. Here arose Argyll's opportunity of showing his good or bad faith. The other judges may have had some part in the choice. They are certainly blamable for failing to protest against it. But to Argyll the shame and crime of those proceedings must be assigned. Of the forty-five jurors who had been cited, eleven had come from Bute, and were presumably free from the bias that might exist in the minds of men from the Campbell country; there were three Stewarts; but the men of Bute and the Stewarts were one and all ignored. Of the fifteen men actually chosen as a jury to try the pannel, eleven bore the name of Campbell. A Macdougall, a Duncaison, a Macneil, and a Gillespie completed the number. A prisoner had then no right of peremptory challenge. James was compelled to receive "justice" from a packed jury.

To attempt a realisation of the prisoner's feelings at that moment would be a task for the novelist rather than the historian; but something of the despair which enters the soul of the shipwrecked sailor, as he is borne wildly in the night towards an unseen surf-bound shore, must then have chilled the hopes of James Stewart.

Mr. Andrew Lang has said—"James Stewart was, to speak plain words, judicially murdered"; and, again, "Political necessities and clan hatred killed James Stewart." The Rev. Dr. Stewart ("Nether Lochaber") endorsed that opinion. Mr. Omond, in his "Lord Advocates of Scotland," boldly asserts that "there can be little doubt that Stewart was sacrificed to political considerations." Mr. J. R. N. Macphail describes this trial as "an impudent mockery." These are strong words; but can any one deny that the partiality displayed in selecting the jury justifies them all? Mr. Macphail very properly recalls the defence once offered for Argyll as quoted by Lord Cockburn in his "Circuit Journeys." "A loyal Campbell, who had the hanging of James Stewart flung in his face, retorted with some pride that anybody could get a guilty man hanged, but only Mac Chailean Mhor a man who was innocent."

The taking of evidence then began. In those days a witness in being sworn was "purged of malice." Three preliminary

## A Son of Rob Roy.

questions were asked—"Do you bear any malice against the prisoner?" "Has any one given you a reward or promise of a reward for being a witness?" and "Has any one instructed you what to say?" Stenography was not used in Court. The preparation by the judges of a synopsis of each person's evidence and the signing of that synopsis by the declarant was the old method, and it made the trial very lengthy. Indeed, the hearing of evidence proceeded for nearly fifty consecutive hours without a single adjournment.

The witnesses on both sides seem to have spoken truthfully. No one of them can be accused of stretching the facts against the prisoner. It is true that James afterwards stated that some things had been sworn falsely against him, but he did not maintain that the inaccuracies were serious. If the record of the trial had been available to us in the form of "question and answer" we would certainly have a far better insight into the personal prejudices of the witnesses and the gifts of the counsel. The summarised form of the notes robs us therefore of much, but, as the record stands, only one serious contradiction of evidence is preserved.\*

An attempt was made to lead direct evidence that James had previously endeavoured to arrange the murder of Glenure by deputy, but the attempt to secure James's condemnation by this means utterly failed. Thus the responsibility of this judicial crime rests wholly on the three judges and the jurors, for they were even without the excuse of "conflicting evidence." Had one scoundrel had his way, the jury might have had that as an excuse for the decision; and here one of the most interesting sidelights on this remarkable case may be referred to.

James MacGregor Drummond, a son of Rob Roy, was

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\* Donald Stewart, who conversed with Allan on the evening of the Thursday (14th May), deponed to giving James a message from Allan at 10 a.m. on the 15th, and it was said that only on receipt of this message did James send the packman to Maryburgh (at least ten miles) for money. The latter stated that he left Acharn at noon and arrived at Maryburgh in the evening. The receiver of James's communication averred that it arrived at Maryburgh between ten and twelve in the forenoon. This is important. If the packman was despatched by James before Allan's messenger saw James Stewart, it would be clear that there had been a previous bargain between Allan and James as to sending money; but, as is pointed out later on in these notes, even clear proof of an arrangement to send Allan money after a flight would not prove foreknowledge by James of murderous intent on Allan's part. Allan was a deserter, and might have to take to his heels at any time for that reason alone.

## James Stewart.

then a prisoner in the Tolbooth of Edinburgh, having been found guilty of forcibly abducting a young woman and causing her to be married to his brother Robin Og against her will. In the circumstances the Court was inclined to sentence him to death, but on account of a doubt as to the competency of the proposed sentence judgment was delayed. James of the Glen seems to have called for Drummond when in Edinburgh; and the idea of saving his own neck at the expense of Stewart's occurred to the fertile brain of the convict. Evidence of the continued cunning of this despicable villain is reproduced in the Appendix.\* He offered to state that Stewart had attempted to induce him to murder Glenure, for which grim service he was to receive the very modest recompense of a gun. Drummond's offer to give evidence was communicated to Glenure's brother, Barcaldine, and by him to the Barons of Exchequer,† who forwarded it to London with the recommendation that the offer be accepted, and that Drummond be released so that he might be made a witness. The Lords Justices very properly declined to adopt the odious proposal, and expressed the hope that sentence would "at last be pronounced against him to the utmost extent of that justice he shall appear to have deserved." Thus Drummond was unable to appear at Inveraray and give the Duke the benefit of his assistance. Suggestions that a written statement by him was officially circulated among the jurymen, though not communicated to those in charge of the defence, may be rejected, but Barcaldine's desire to have Drummond presented as a witness may quite probably have been within the private knowledge of some of the jurymen.

As it was, the evidence, beaten up so diligently by the prosecutors while the accused man was languishing in jail without legal help, was led in the ordinary way, and had wonderfully little to offer in the way of acute sensation. It showed how the trouble between Glenure and the Ardshiel tenants had arisen; how James Stewart had become active in asserting the tenants' rights; how he and his worthless ward, Allan Breck, had spoken threatening words about the factor; and how that gentleman had met a cruel death in the wood at Lettermore at the hands of an assassin.

\* P. 364. † Appendix, p. 347.

## The Case against Allan Breck.

The evidence against Allan Breck may be summed up in a few words. (1) He was said to have told Angus Macdonald (p. 138) that he did not like men of that name (Campbell) or sort, because Glenure had informed Colonel Crawford that he (Allan Breck) had come from France, and that he should be arrested as a deserter. (2) He was said to have made the same statement to Duncan Campbell (p. 139), and to have added that if Duncan had any respect for his friends he would tell them that if they offered to turn out the possessors of Ardschiel's lands he would make "blackcocks of them," and that he would be "fitsides" with Glenure wherever he met him, and wanted nothing better than to meet him at a convenient place. (3) He is reported to have said, when in drink, to Robert Stewart (p. 140), that he would take the opportunity to despatch or murder either Glenure or Ballieveolan before he left the county. (4) Evidence was given that he said to Malcolm Bane MacColl (p. 141), after giving him a dram, that if he would fetch him "the red fox's skin" he would give him what was much better than a dram—a statement to which the witness attached no special meaning at the time, but which, after the murder, he took to have contained a reference to Glenure, who was locally known as "Red Colin." (5) Archibald MacInnes, the ferryman, stated (p. 147) that Allan came to the ferry on the day of the murder and asked him if Glenure had crossed from Lochaber. (6) He wore a dark suit on that day, and Mungo Campbell swore that the escaping assassin, whom he saw, also wore a dark grey suit. (7) He left the immediate neighbourhood of Ballachulish almost at the hour of the tragedy.

These are formidable assertions, and it must be admitted that they raise a very strong presumption that Allan, if not the actual murderer, was far from being blameless. But do they amount to proof even when taken as links in a chain of circumstantial evidence? That Allan hated Glenure, no one can deny. Murderous designs had certainly formed themselves in his miscreant brain. But did he put them into execution? The reader may draw his own conclusions from the first five points above noted, but points 6 and 7 cannot be admitted as strengthening the theory. Dark suits were not uncommon in those days, when the wearing of tartan was a criminal offence; and the prosecution's contention that Allan

## James Stewart.

wore a sombre garb as a disguise can command no respect, for it was explained that he had replaced his gaudy French costume by this homely one, for the very excellent reason that he was a trout fisher, and that fish have displayed a distinct and pardonable antipathy to close acquaintance with brightly dressed visitors. Moreover, on several occasions he had worn the dress openly for days. His flight is equally unavailable as evidence. He was a deserter, and was, as he himself mentioned to Donald Stewart (p. 148), sure to be rounded up in any hue and cry if he did not act speedily in making his escape.

Against the other admittedly suspicious circumstances one or two that tell more or less in Allan's favour may be culled from the mass of evidence. (1) Mungo Campbell, who saw the murderer escaping, was at so great a distance from him that he says he could not have known him even if he had seen his face (p. 132). It is worthy of note, however, that Mungo knew Allan Breck by sight, and that the running of an in-kneed man has something distinctive in it. Indeed, as previously mentioned, Mungo was the man chosen to go to Carlisle to identify the in-kneed man, whose peculiarities of limbs and face did him the additional wrong of causing him to be arrested there on suspicion of being Allan Breck. (2) Allan Oig Cameron, a member of a friendly clan, speaks to Allan Breck having declared, with an oath, that he had nothing to do with the murder (p. 151). (3) Dugald MacColl and John Beg MacColl said Allan was in the habit of using the big Spanish gun for shooting blackcock, and that it was at Acharn on the day of the murder (pp. 167 and 173), a day on which it was not suggested that Allan had visited that farm. Allan, therefore, if he was the murderer, did not use the weapon with which he was most familiar. (4) A number of witnesses spoke to having questioned Allan as to his share in the crime before they knew any of the facts, thereby showing the likelihood of his being suspected, even though innocent. These are very slender pegs on which to hang a heavy weight of argument for innocence, and Allan, guilty or not, would have had little cause to grumble if his vulgar boastings and irresponsible conduct had landed him in the dock.\*

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\* Some interesting facts relating to Allan's further career are recorded in the Appendix (p. 319).

## The Case against James Stewart.

But a more difficult task lay before the prosecution. Even if the evidence left no room for doubting Allan's guilt, it had still to be proved that James Stewart was the instigator of the outrage. (Mr. Hugo Arnot in his "Criminal Trials," p. 227, very properly points out that there was as much evidence against James's son Allan as against James himself.)

Evidence was offered (1) that James and Allan Breck were conjunct and confident persons, and that both had breathed out threatenings against the Campbells, and especially against Glenure, James having stated to Alexander Campbell (p. 159) that he "did not know anything that he would help him, or any of his name, to, if it was not to the gibbet," and that "Glenure was the man of the name with whom he had the greatest quarrel"; (2) that Allan, at the time of the murder, was wearing a suit of James's clothes (p. 167, &c.); (3) that James was apprehensive of his own safety when he heard of the crime (p. 172); and (4) that James and his wife had facilitated Allan's escape by sending him money and by despatching his French clothes to an appointed place in Glencoe.\*

Such was the case for the Crown. These facts were interesting; they were relevant. They were the siftings of the statements of seven hundred precognosced persons. There was a fair case for the arrest of James "on suspicion." The primary trouble that fell on him was not fortuitous. His threatenings alone were enough to warrant an apprehension pending inquiry. On these grounds, however, the authorities had subjected him to a most cruel deprivation of civil rights and to a long term of preliminary imprisonment. In doing so they may have been partly justified by the need of making a show

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\* The absence of scientific evidence at this trial is not remarkable. Justice had not then the powerful resources that medical jurisprudence now places at her disposal. Alexander Campbell, surgeon in Lorn, deponed to the fact that two bullets had entered Glenure's body, and had caused his death. There was no measuring of wounds, no comparison of their size with the bore of local guns, no calculation of the distance at which the shot was fired, no speculations as to the possibility of the bullets having been discharged separately. Perhaps such evidence was unnecessary. Probably in those days of smooth-bore pieces nothing definite could have been proved. The lack of scientific treatment in this case forms an interesting contrast to that adopted in the other great Argyllshire shooting mystery. At Lettermore, as at Ardlamont, a man died from a wound received at close range and in mysterious circumstances. James Stewart was hanged in the absence of scientific evidence. The case against the man Monson was found "not proven," with scientific evidence on both sides.

## James Stewart.

of severity. But would they now move for sentence of death when their efforts to prove complicity had so utterly failed? They had admittedly raised some doubts as to the prisoner's previous knowledge of the crime. But their string of circumstances, though relevant enough, was capable of ready explanation on hypotheses involving the prisoner's entire innocence. Thus they had *proved* nothing, and the Lord Advocate must have known that no oratorical dressing of the facts could induce any unbiassed jury to send James Stewart to the gallows. But Argyll was on the bench and the jury were ready to convict, so Mr. Grant proceeded to what he described in his first sentence as his "duty."

In most cases it would have been his "duty," when the case had gone so far, to disregard his private opinion of the state of the evidence, and to leave the verdict to the Court. But if he were well aware, as he must have been, that no verdict could here be just, save one of "not proven," or even "not guilty"; and if he were also aware, as he must have been, that ordinary justice at the hands of this jury would certainly be denied to this occupant of the dock, his highest duty pointed to another, though an unusual, course—to decline to proceed further with the case. James Stewart's apparently narrow escape would have been a sufficient warning to the disloyal Highlanders, and Scotsmen would still have respected the judicial system of their country. But, for once, this man, true gentleman though he was, made himself a party to a deed of shame.

The drama was drawing to a close. The Government would soon have achieved its object—to make an example of some one. Once more, and more minutely than ever, the weary tale was told. Suspicious circumstances were again placed in telling relationship to other suspicious circumstances. Then the Lord Advocate concluded with the usual charge to the jury to acquit the prisoner if they had doubt of his complicity, but to convict him if they were convinced that he was guilty. That this behest was honestly given we do not doubt. He had not pressed the facts more strongly than might have been expected, nor is his speech open to any reasonable objection, save this very serious one, that it should ever have been made at all.

A second night had come and gone and the curtain had not

## Closing Scenes of the Trial.

fallen, even for a moment, upon the weary tragedy in the old Inveraray Court-house. When Mr. Brown rose to make his last appeal for justice the dim light of a September Sabbath morning must have been filtering through the windows from beyond the Cowal hills.

Without undue straining of the imagination one can draw in outline a picture of that scene—the keen Argyll intently listening to every word that passed; his fellow-judges wondering for the hundredth time if this were not an occasion for disregarding the President's obvious wishes and doing justice though the heavens should fall, endeavouring to fix their thoughts on these strange proceedings in which they had been called to bear the obloquy as well as the toil; the jurymen, restless in their box, their faces bleached with the pallor that the dawn brings, their stagnant brains becoming more and more impressed with the thought that the old, rude style of clan vengeance was preferable to this orderly farce; the prisoner, nurturing a keener form of the same conviction, but strengthened by the courage which Heaven sends to all brave men when their hour is near.

Mr. Brown then spoke on behalf of the accused man. His position was a strange one. No counsel could have desired a stronger case, yet he had to hark back to the old appeal for an impartial consideration of the evidence, and to threaten his jury with the verdict of posterity upon the record of their proceedings. His method of dealing with the evidence was as thorough as that of the previous speaker. When the reader remembers that the Court had been sitting for well-nigh fifty hours consecutively before Mr. Brown's appeal began, he may well marvel at its clearness and pathos, and pay a tribute of admiration to the physical endurance displayed at this assize.

At length the speeches were finished. All that the skill of the prisoner's counsel could do had been accomplished. No record of any summing-up is in existence. Probably none took place.\*

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\* In dealing with the case of the Ogilvies, which occurred at a considerably later date, and when Stewart's counsel, Mr. Miller, was Lord-Advocate, Mr. Ramsay says, "As the law then stood the prisoner's counsel spoke immediately before the jury were enclosed. Nor were the judges understood to have title to interfere."—Ochtertyre Papers, p. 348. This rule probably explains the absence of any summing up at the trial now under consideration.

## James Stewart.

The Court was adjourned until next day (Monday) at 11 a.m., and it is said that Lord Elchies suggested to the jury that they should "refresh themselves with sleep before they should proceed to consider the case and make out their verdict." The author of the "Supplement" avers that this advice was disregarded, and that the jury, after some refreshment, proceeded at once to business, and settled upon their verdict within four hours' time. The truth of this statement is made plain by the date of the jury's verdict, which was dated 24th September, and it was therefore returned on Sabbath, the day previous to the final sitting of the Court.

In what rank of life or grade of intellect were these jurors? The question is eminently relevant. Were they ignorant men who might be pardoned for accepting as "right in honour" any course that was plainly indicated by a Duke of Argyll? We cannot accept that plea on their behalf. The use of cool judgment and the realisation of social responsibility were not such novel phenomena in Argyllshire one hundred and fifty years ago as to render the excuse of ignorance available in support of such a contention, even in defence of a plebeian jury—and this jury was not plebeian. Every man of them would have bitterly resented the suggestion that he was poorly educated. Fourteen of them are described in the jurors' list in the manner only used in the Highlands to denote a landowner, and the fifteenth was an ex-bailie of the Argyllshire county town. One regrets to have to fix the infamy of this verdict and of its result upon important members of a great clan, but the fact is clear that of the men who sent James Stewart to the gallows ten were described as landowners bearing the name of Campbell, and the eleventh was the Inveraray ex-bailie of the same name. That these men acted as they believed Argyll wished them to act is probably true. But they and the other four men did so, knowing the value of evidence in general, and of this evidence in particular. They may have been incapable of rising above their preconceived opinions. Probably no juryman ever has totally shed his previous notions. But these men had their remedy—to decline the duty on the plea of prejudice, as, in fact, an honourable Campbell had done ere the proof was begun. Indeed, if clan loyalty is to be considered in mitigation of the modern critics' censure, it must be remembered that those

## Argyll's Opinions.

very men had failed to place it, even when coupled with intimate personal relationship, in the scale with which they weighed their prisoner's intimacy with Allan Breck.

On the Monday forenoon the judges again took their places on the bench, and James Stewart was brought in to hear his doom pronounced. The Court received the written verdict of the jury, and granted a formal interlocutor, condemning the prisoner to be taken to Ballachulish, and there to be hanged by the neck on a gibbet until dead, his body thereafter to be suspended in chains. Lords Elchies and Kilkerran then addressed the prisoner, but no record of their speeches has been preserved. It would be interesting to know if they attempted to justify their action in enforcing a verdict which all subsequent critics have condemned as monstrously unjust.

The Duke's address contains only one reference to the proceedings—"The jury have unanimously found you guilty of having been accessory to this horrid murder, which upon due consideration of all circumstances seems to be according to the evidence." His further remarks dealt with the three risings in which the Stewart clan had been engaged. Dealing with that of the '45, he said, "If you had been successful in that rebellion you now would have been triumphant with your confederates, trampling upon the laws of your country, the liberties of your fellow-subjects, and on the Protestant religion." You might have been giving the law where you now have received the judgment of it; and we who are this day your judges might have been tried before one of your mock Courts of judicature, and then you might have been satiated with the blood of any name or clan to which you had an aversion." It was a remarkable speech. If it was inspired merely by a desire to "improve the occasion" for the benefit of a region still full of the old spirit of rebellion, what may then be termed its "insincerities" lose some of their hideousness. If it was the outcome of real conviction, we have in this Duke of Argyll a subject for psychological study such as is seldom preserved in literature.

In a few manly words the prisoner protested his innocence, his readiness to die, and his grief that his name should afterwards be associated with a deed so foul.

So ended the trial of this unhappy man. Political scheming

## James Stewart.

and private hatred had done their worst. James Stewart had been solemnly condemned to suffer the severest penalty the law can impose. Yet it was he and not the judges or the counsel for the prosecution who carried off the honour on that day.

And what shall be said of the public effect of this judgment? Here was a country just emerging into a new judicial era. Justice in Argyllshire was entering on its third and what has proved its highest stage. The rule of the strong man, merely because he was strong, had long ago given place to the rule of the same strong man, because he had behind him the authority of the nation. That state of matters had, in its turn, been replaced by the abolition of the old heritable jurisdiction and the full assumption by the State of the right to judge. The people had good reason to welcome the prospect of administration by their new judges. The old hereditary justiciar, who occupied the bench solely because he was his father's son, had now given place to the trained lawyer. Common men had grounds for expecting that all cases would now be viewed on their own merits, and that local politics would never again strut brazenly in Courts of justice.

Argyll, as it happened, had supported the bill for abolishing the heritable jurisdictions when it was passing through Parliament. He had, indeed, received a payment of £21,000 as compensation for the loss of his family's judicial rights in the West Country; yet here he, his high office, and the whole scheme for which he had been a sponsor, stood discredited and disgraced. "Justice" in that county was now a thing for any tipsy wayfarer to jeer at; for any high-born bully to mock, when a dependant invoked its sacred name.

The effect of such isolated events in matters of a country's law is happily only temporary. The law in Scotland quickly "lives them down." When the judge concerned had retired from the bench his old misdeeds became innocuous. This trial, and even the judicial lapses of the Scotch judges in the early nineteenth century, such as the conviction of James Muir, younger of Huntershill, for his connection with "The Friends of the People," have ceased to bring the name of modern justice within the scope of the scoffer. Here, surely, we act well in ignoring such legal precedents.

## Cnap Chaolis.

James Stewart was carried back to Inveraray Prison, and he was afterwards transferred to the scene of his former confinement at Fort-William. We are told that "until the fatal day of execution he behaved in every respect so like a good Christian that his greatest enemies were forced to commend him." It is pleasing to note that at least one man bearing the name of Campbell took pity on him in his extremity—Mr. Alexander Campbell, an Inveraray minister. Both he and the Reverend Mr. Macaskill attended him in prison, and it is recorded that Mr. Macaskill afterwards expressed "his belief in James Stewart's innocence of any complicity in the crime for which he suffered."

While he lay in prison some of his personal friends were allowed to converse with him. They told him that notes had been taken at the trial with a view to publishing an account of it. This pleased him. "If that shall be done," he said, "the world will have an opportunity of seeing and judging of my share in the murder, a crime I ever abhorred, and the justice done me in the trial."

At length his last day on earth arrived. A gibbet had been erected at Cnap Chaolis Mhic Pharuig, near the present south slip at Ballachulish Ferry, and there, on the 8th November, 1752, the country folk assembled to see James Stewart die. Charles Stewart, the craven notary, was there too, feeling, no doubt, that he was well out of a sorry business.

We may be sure that the palm of many a Jacobite hand was itching for the grip of a claymore, and that many a Stewart heart was throbbing wildly; the lust of hate must have been in many a mind that seldom harboured it; but the few remaining claymores were under the thatch, and there were not guns enough to match the redcoats. Had there been no Disarming Act it is just possible that Culloden might not have been the last battle fought on British soil.

The wind was high, and the cruel work at Cnap Chaolis was long adoin. James spoke his last words.\* The internal evidence of such utterances does not always count for much, but have we not here a statement that from its moderation, its candour, and its forgiveness, has put the seal of truth on those lips that the Campbell jury were about to leave as food for the ravens?

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\* See page 292.

## James Stewart.

The dead body was hung in chains at five in the afternoon.

A task still remained to the King's soldiers in North Argyll. They had to mount guard over the corpse and prevent the Stewarts taking it away for burial. When the Old New Year came round (that first of Old New Years) the soldiers were still shivering at their strange sentry duty, and on the 11th January, 1753, the Barons' secretary announced to Mungo Campbell (who was now the factor) that General Churchill had asked them to order the tenants to build a hut for the soldiers who were on guard at Cnap Chaolis. And there the body hung in chains till it began to fall in pieces, and to some poor soldier fell the duty of reconstructing it, with wire for tendons.

Years passed, and the skeleton still rattled on the gibbet. In 1755 it fell, and the officers of State thought it necessary not only to replace it on the gibbet, but to institute inquiries as to the circumstances of its fall; and then it vanished mysteriously. Let us hope that one of the interesting local traditions recorded in another part of this volume\* is well founded, and that the bones of Sheumas a' Ghlinne had at last found a quiet resting-place in the kirkyard of the Ardshiels, in Duror of Appin.

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\* Appendix, p. 368.

# THE TRIAL.

## INDICTMENT.

THE indictment against the two accused persons was in the following terms:—

**GEORGE**, by the grace of God, King of Great Britain, France and Ireland, defender of the faith: to our loving

magistrates of our court of justiciary, messengers at arms, our sheriffs in that part, conjunctly and severally, specially constitute, greeting: **FORASMUCH** as it is humbly meant and complained to us, by our right truly William Grant of Prestongrange, Esq.; our advocate, for our interest, **AND ALSO** by our loving Janet Mackay, daughter to the honourable Hugh Mackay of Bighouse, Esq.; and relict of the deceased Colin Campbell of Glenure, for herself, and on behalf of Elizabeth and Lucy Campbells, her infant children, with concurrence of our said advocate, for our interest, **UPON** James Stewart in Aucharn in Burrow of Appin, commonly known or reputed to be the natural brother of Charles Stewart of Ardshiel, attainted, and present prisoner in Fort-William; and upon Allan Stewart, commonly called Allan Breck Stewart, son to Donald Stewart, alias Vie Ean Vie Allister, sometime in Inverchonnrie in Rannoch; and since, or sometime after the eighteenth day of April, One thousand seven hundred and forty six, a cadet or soldier in the French King's service, or reputed in this country to have been such.

**THAT WHEREAS**, by the law of God, and the laws of this and all other well governed realms, **MURDER** is a most heinous crime, and severely punishable, especially when the same is committed deliberately, and by lying in wait, and from a malice conceived against the person so murdered, on account of the faithful discharge of the duty of his office.

**YET TRUE** it is, and of verity, that the said James Stewart and Allan Stewart, commonly called Allan Breck Stewart, complained upon, are guilty, actors, or art and part of the said heinous crime of murder, aggravated as aforesaid, **IN SO FAR** as the barons of our court of exchequer in Scotland having, by commission dated the twenty third day of February, 1748-9 years, appointed the said Colin Campbell of Glenure to be factor upon the lands and estate of Ardshiel, forfeited to us by the attainder of the said Charles Stewart, and lying within the

## James Stewart.

shire of Argyll, and in the neighbourhood of Glenure, the house of the said Colin Campbell, and also appointed him factor on that part of the forfeited estate of Lochiel, called Mamore, lying in the shire of Inverness, and in the neighbourhood of Fort-William, and upon the forfeited estate of Allan Cameron of Callart, in the shire of Inverness, adjoining to the said lands of Mamore, and lying betwixt Fort-William and Appin; he, the said Colin, entered upon the said office, and proceeding in the faithful execution thereof, did, among other things, at Whitsunday, One thousand seven hundred and fifty one, cause to be removed the said James Stewart from Glen-duror, a farm or possession that had been held by him on the said estate of Ardshiel: and in the month of April, in this present year 1752, the said Colin Campbell had taken measures for causing to be removed at the term of Whitsunday, or fifteenth day of May, now last bypast, certain other persons who were tenants or possessors of farms upon the said lands or estate of Ardshiel; **WHICH PROCEEDING** was by the said James Stewart, for reasons known to himself, so much resented, that, without any warrant or authority from the tenants, or persons themselves, so intended to be removed, he, the said James Stewart, in the month of April last, came in person to Edinburgh, and caused to be presented, in name of the said tenants, to our lords of session, a bill of suspension of the said intended removing, upon divers affected reasons, that were either false or frivolous; and having procured an order for answering said bill, and a sist of execution in the meantime, he returned into the country, and caused the tenants intimate the sist to the said Colin Campbell; who thereupon repaired to Edinburgh, where an answer having been made to the said bill, the same was refused by the Lord ordinary, and the said Colin Campbell returned to his own house at Glenure, where he might be in the way to attend the duty of his office, and to cause the said removing to be put in execution, and the new tenants introduced to the lands on the said fifteenth day of May last.—And on account of the said Colin Campbell's accepting of the said office, and of the above mentioned and other his proceedings in the faithful discharge of the duty thereof, the said James Stewart, and Allan Breck Stewart, conceived a most groundless and unjust resentment, malice, and enmity against him, and at length entered into a wicked conspiracy, barbarously to murder the said Colin Campbell, and to bereave him of his life by the hands of the said Allan Breck Stewart, who had but then lately come back from foreign parts into that country, and intended soon to go again beyond sea; and, during his said last abode in the country, had chiefly frequented the house and company of the said James Stewart.—And, in prosecution of this wicked conspiracy, upon Monday the eleventh day of May last, on the morning of which day the

## Indictment.

said Colin Campbell left his own house of Glenure, to go to Fort-William, in the country of Lochaber, about the distance of sixteen computed miles northward, in order to transact some business relating to his factory on the estate of Lochiel, and from whence he was certainly expected to return to the lands of Ardshiel before Friday in the same week, being the fifteenth day of the said month, when certain tenants on the lands of Ardshiel were to be removed, as above mentioned, and others introduced in their room; the said Allan Breck Stewart went from the house of John Stewart of Fasnacloich, which lies near to Glenure, to the house of the said James Stewart at Aucharn, lying in the same neighbourhood, at the distance of about four miles northward; and there the said James Stewart was informed, either by the said Allan Breck Stewart, or by his own son Charles Stewart, or by Stewart daughter to the said John Stewart of Fasnacloich, that they heard, or were informed, that the said Colin Campbell of Glenure was to go to Lochaber that day, and that he was to persist or proceed in the intended removing of the tenants of Ardshiel, (as the said James Stewart has, among other things, acknowledged in his judicial declaration taken before the sheriff-substitute of Inverness); and there, after receiving such advice, in the evening of the same day, the said Allan Breck Stewart laid aside his own cloaths, which he had brought with him, being a blue coat, scarlet vest, and black breeches of shag or velvet, which were believed to have been brought by him from France, and which was a remarkable or distinguishing dress in that part of the country, and then and there the said James Stewart furnished him, the said Allan Breck Stewart, with a suit of his, the said James's, own cloaths, being a dark coloured short coat, with silver buttons, trowsers, and a blue bonnet, in which the said Allan dressed himself that evening.—And also next morning of Tuesday the twelfth of May last, when he left the said James Stewart's house, where the said Allan left behind him his own French cloaths aforesaid, together with his hat, and then set out, in order to lie in wait for the said Colin Campbell on his way, when he should return from Fort-William to the lands of Ardshiel, which lands are bordered on the North-east with the lands belonging to Alexander Stewart of Ballachelish, whose house stands near to the ferry of Ballachelish, upon a narrow arm of the sea called Lochleven, that separates the country of Appin on the south, from that of Mamore, part of Lochiel's estate, on the north side of it, and by which ferry of Ballachelish it was known or expected, that the said Colin Campbell would pass, in his return from Fort-William; and, to the said place of Ballachelish, the said Allan Breck Stewart directly went, from the house of the said James Stewart at Aucharn, on this Tuesday the twelfth of May last; and, from thence, the same day, accom-

## James Stewart.

panied by James Stewart the younger of Fasnacloich, went to Glenco's house in Carnoch, about three miles farther eastward, where the dowager lady of the house is sister to the said Charles Stewart late of Ardshiel, and to her the said James Stewart is natural brother; and, from thence, he went that same day to the house of Callart, which sometime belonged to Allan Cameron of Callart, attainted, and was still inhabited by Helen Stewart his widow, and also sister to the said Charles Stewart of Ardshiel, and to the said James Stewart, at which house he lodged all that Tuesday night—and, next day, being Wednesday, the thirteenth of May last, the said Allan Breck Stewart came back, after calling again at Carnoch, to the house of Alexander Stewart of Ballachelish, near the ferry aforesaid, where he remained the night following;—and, upon Thursday the fourteenth of the said month of May last, when it might be certainly expected that the said Colin Campbell would return from Fort-William to the lands of Ardshiel, and country of Appin, by the said ferry of Ballachelish, the said Allan Breck Stewart waited about the said house till about twelve of the clock that day; and then, under pretence of going a-fishing, walked up along a burn or rivulet near to the said house to the higher grounds, from whence he had a prospect of the high-road leading from Fort-William to the lands of Ardshiel, and access by a short passage into the wood of Lettermore, standing upon the lands of Ardshiel, and adjoining to the said road on the south side, about a mile distant from the house and ferry of Ballachelish; and, having posted himself in the said wood, near to the high road, by which the said Colin Campbell was to pass, at a convenient station for his wicked purpose, where he had brought, or caused to be brought and placed one or two guns, or muskets, loaded, with which he continued some time concealed in the wood; and, at length, about five or six o'clock in the afternoon of the said fourteenth day of May last: the said Colin Campbell having passed the ferry of Ballachelish, and been conveyed by the said Alexander Stewart of Ballachelish from the ferry to the entrance of the wood of Lettermore, as he continued his journey, passing on horseback along, or through the said wood, accompanied by Donald Kennedy a sheriff's officer of Argyllshire, who was on foot, and had got some space before him, the road being bad for horses, and by Mungo Campbell writer in Edinburgh, a young man, who was then riding a little way before him; and behind him, at some distance, was John Mackenzie servant to the said Colin, and also on horseback.

And then and there, the said Allan Breck Stewart fired upon the said Colin Campbell from behind his back, and shot him through the body with two balls, of which wounds the said Colin Campbell died upon the spot, in less than an hour after.

Whereupon the said Allan Breck Stewart absconded, and, from

## Indictment.

that time, appeared no longer openly in the country; but, during the night following, or about three o'clock in the morning of Friday the fifteenth day of May last, he came to Carnoch, the house of John Macdonald of Glenco above mentioned, where he knocked at a window when the family were all in bed; and the said John Macdonald of Glenco, and Isobel Stewart his stepmother, got up, and went to the door to the said Allan, who then told them, that the said Colin Campbell had been shot dead the evening preceding, in the wood of Lettermore, and that he, the said Allan, was leaving the country, and going the moor-road, and was come to take leave of them, the said lady, and Glenco her son-in-law, which he immediately did, and went away, without entering the house, tho' he was invited by the lady to come in, and take some refreshment there.

That, in the meantime, the said James Stewart, complained upon, remained at his own house at Aucharn, from which, on the morning of Thursday, the fourteenth of May last, he sent a letter, by John Maccoll his servant, to Charles Stewart writer in Auchintour, in which, *inter alia*, he writes, "As I have no time to write to William, let him send down immediately 8l Sterling, to pay four milk cows I bought for his use at Ardshiel." And as he, the said James, hath judicially declared, (when examined at Fort-William, on the second of June last, in presence of George Douglas sheriff substitute of Inverness-shire) he did not see the said Allan Breck Stewart after the murder; but upon notice being brought to the said James Stewart complained on, at his own house at Aucharn, immediately after it happened, on the said Thursday evening, by the said John Mackenzie, servant to the said now deceased Colin Campbell, who, having left the said Mungo Campbell to attend the corpse where it lay, rode away to get help or assistance for transporting the same to some fit house or place; the said James Stewart, complained upon, appeared noways surprised or concerned at the news of the murder; and neither he, nor any of his family, went to look after the corpse, or to assist in the carrying it, as others of the neighbourhood did. And, upon the morning, or about noon of the day following the murder, being Friday the fifteenth of May last, the said James Stewart, complained upon, sent Alexander Stewart travelling packman in Appin, to William Stewart merchant in Maryburgh, with directions to get from the said William five pounds Sterling, or five guineas; and then told the said packman, that his friend Allan Breck Stewart was going to leave the country; and that it was incumbent on him the said James, to supply him with money; whereupon, the said packman, that same day, repaired to Fort-William, and delivered his said message from the said James Stewart, to the said William Stewart, who immediately caused his wife bring the packman three guineas,—with which the packman returned

## James Stewart.

the next day, being Saturday, the sixteenth of May last, back to the said James Stewart's house at Aucharn; and, upon his arrival there, found the said James Stewart prisoner, in the custody of a party of soldiers; and the said packman being allowed to converse privately with the said James Stewart and his wife; and having informed him, that he had only received three guineas from William Stewart at Maryburgh, the said James Stewart took out of his purse two guineas, which he gave to his wife, desiring her to give the same to the packman; to go with these, and the three guineas he already had, and also with Allan Breck Stewart's cloaths to him, the said Allan: and, accordingly, on the evening of that same Saturday, after the said James Stewart had been carried off prisoner to Fort-William, his wife brought the said Allan Breck Stewart's cloaths above mentioned, to the packman, and delivered the same tied up in a bundle to him, containing a pair of red breeches, besides the black breeches above mentioned, that were the property of the said Allan himself; and, at the same time, delivered to the packman the two guineas, above mentioned, which she had received from her said husband, for that purpose, and directed the packman to go with the cloaths and the five guineas, and deliver the same to the said Allan Breck Stewart, whom he would find or hear of at the house of John Maccoll, bouman, having the charge of milk cows upon a farm or shealing belonging to Dougal Stewart of Appin, at a remote or solitary place called Koalishnacooan; and the said packman, after getting his supper at Aucharn, set out, on this errand, accordingly that same night:—that, in the mean time, in the afternoon of the said Saturday, the sixteenth of May last, the said Allan Breck Stewart was seen by the said John Maccoll, Appin's bouman, in the heugh of Corrynakiegh, a part of the farm of Koalishnacooan; where, as the bouman was cutting fire-wood, he heard a whistle, and, looking about, observed a man, at a considerable distance, beckon to him, whom, upon his going up to him, he found to be the said Allan Breck Stewart, who saluted him by asking him how he did? and the bouman returned the salute, and told the said Allan, he was afraid it was no good action occasioned his being in such a solitary place; upon which the said Allan asked him, what he meant by that? and the bouman answered, that he would, without doubt, be suspected of Glenure's murder, who, he heard, was shot in the wood of Lettermore; and that there were two men seen go from the place where the action was committed; to which the said Allan replied, that, if he was rightly informed, there was but one person concerned in the murder; and, talking further of the matter, said, he did not doubt the family of Ardshiel would be suspected of the murder; and that he believed James Stewart and his son would be taken up in consequence of their difference with Glenure about the

## Indictment.

lands; but that their being taken up would not be of any consequence to them, as there would be no proof, unless their own tongues betrayed them; and, upon the bouman's saying, that he wished he, the said Allan, would leave his neighbourhood, Allan told him he could not, till he was supplied with money and victuals; and insisted with the bouman, that he should go to the strath of Duror, (where the said James Stewart's house of Aucharn lies) for money, and to the lady Glenco for a peck of meal, both which the bouman appearing to decline, the said Allan added, that he, the bouman, must go to Fort-William with a letter (which the said Allan then wrote with a wood pigeon's quill he had gathered among the trees) to William Stewart merchant in Maryburgh, who, he said, would give him money upon receipt of the letter; and the bouman having also refused to comply with this proposition, giving for his excuse, that he heard that all that went to Fort-William at that time were taken into custody, the said Allan further told him, that unless he should be supplied, from some other quarter, before next day, that he, the bouman, must go to Fort-William, notwithstanding these difficulties, and that he, Allan, was surprised there was no money sent him, though it was promised to be sent him to that place. —That very early in the morning of Sunday the seventeenth of May last, the said John Maccoll, bouman, went out of his house, to look after some cattle that he apprehended were amongst his corns, and then observed, coming towards him, from the westward, a man whom, at a distance, he took to be Allan Breck Stewart, but, upon his nearer approach, found him to be the said Alexander Stewart, packman, who, upon his coming up to him, after the ordinary salutations, asked the bouman if he had seen Allan Breck Stewart? which the bouman having denied, the said packman told him, that he had money and cloaths for the said Allan, which he (Allan) had trusted (or agreed with some other person) to receive at that place from any one who should be sent after him with it, and then the bouman owned he had seen him, the said Allan, and that he was then in the heugh of Corrynatiegh, and told the packman, that if he went to an eminence, which he pointed out to him, and whistled, that the said Allan Breck would probably appear to him; but this the packman declined, complaining that he was so fatigued with travelling the whole night, that he would not go, having been lately upon his own business at Fort-William, and having been obliged to go there again on the said James Stewart's errand above mentioned; and therefore desired the said bouman to deliver the five guineas, which he then gave him, to the said Allan Breck Stewart, together with a bundle of cloaths, which he, the packman, had left at the root of a fir tree then in their view, which he pointed out to the said bouman, who promised to deliver both

## James Stewart.

to the said Allan as desired; whereupon the packman, being much fatigued, went to sleep in the bouman's house;—and in the evening of the same Sunday, the seventeenth of May last, after the said John Maccoll, bouman to Appin, was gone to bed, he was awaked by the said Allan Breck Stewart his knocking at the window of his, the said bouman's, house; whereby the board or shutter of his said window fell in; whereupon the said bouman got up from his bed, and went out, when he found the said Allan Breck Stewart retired at some distance from his house, who, first of all, told him he stood in great need of a drink; upon which the bouman went into his house, and returned with a noggan or dish full of milk and water that had been boiled, which noggan the bouman carried in his hand, in company with the said Allan, till they came together to the brink of a burn or rivulet not far from the bouman's house; and, at this meeting, the said Allan Breck asked the bouman, whether there had any body come to that place with a message for him? which the bouman answered in the affirmative, and then gave the said Allan the five guineas he had received from Allan Stewart the packman; upon which the said Allan Breck Stewart said, he hoped that would do without his sending to William Stewart at Fort-Wilham, and inquired if anything else had been brought for him? whereupon the bouman delivered to him the bundle of cloaths above mentioned, that had been left by Alexander Stewart the packman, for that purpose, at the fir tree; and then the said Allan requested and entreated the bouman to meet him at that place next morning early, that he might deliver to him the dark coloured coat mounted with silver buttons, and a pair of trowsers, which the said Allan then wore and had upon him, and which he told the bouman were the property of the said James Stewart in Aucharn, to the end that the bouman might restore and deliver these cloaths to the said James, or to Margaret Stewart his wife; and the said bouman promised to meet the said Allan next morning, as he desired;—and accordingly the bouman repaired, next morning before sun rise, to the place appointed, at the side of the rivulet, for their meeting, where he did not find or see the said Allan himself, but found there the black or dark coloured coat and trowsers before described, together with his own noggan or dish in which he had brought the milk and water to the said Allan, and, in one of the pockets of the said short coat, the said bouman found a small powder horn, of a flat make, with some carving upon the horn, and red wax on the inside thereof for mending a slit or hole;—that, from this place the said Allan Breck Stewart withdrew from that country a-cross the moors, as he proposed, by going a-cross mountains and desarts, where there was no dwelling-house for the space of about eighteen computed miles eastward, to the country called Rannoch, in the north west

## Indictment.

corner of Perthshire, where the mother of the said Allan Breck Stewart and other friends or relations of his, live; amongst whom he kept himself concealed for a few days, and was there seen with the aforesaid French dress, and a pair of red breeches; after which he withdrew from that country, and has not been since seen or heard of, in this kingdom, that the complainers have been able to learn.—And in a letter, wrote by the said James Stewart, since he was taken into custody, on account of said murder, bearing date Fort-William the nineteenth day of May last, and addressed to Mr. John Macfarlane writer to the signet, wherein the said James professes great detestation of the murder, and great desire that the said Allan Breck Stewart might be apprehended, and, for that purpose, describes the person and dress of the said Allan; he, *inter alia*, says, that he, the said Allan, wore a pair of red breeches.

FROM ALL WHICH, and other facts and circumstances, that will be proved against the saids persons complained upon, and particularly the threatenings of death and destruction which the said James Stewart, and the said Allan Breck Stewart, above complained upon, have been heard to utter against the said Colin Campbell of Glenure, now bereaved of his life, by the horrid murder and assassination aforesaid, it will be made evident and proved, that the said James Stewart, and Allan Breck Stewart, complained upon, and each of them, are guilty, actors, or art and part of the said horrid murder.

And, as a part of this proof, there will be produced certain documents in writing, and other particulars enumerated and contained in an inventory or list thereof, signed by the complainers or either of them, copies of which list or inventory will be delivered to, or served upon the persons complained upon, at the time of executing this libel; and the said written documents and other particulars themselves will, before trial, be lodged in the hands of the clerk to the circuit court of justiciary, before which the persons complained upon are to be tried, that they may see the same.

AT LEAST, at the time and place aforesaid, the said Colin Campbell of Glenure was barbarously murdered, and the said James Stewart and Allan Breck Stewart above complained upon, are guilty, actors, or art and part of the said murder.

ALL WHICH, or part thereof, being found proven by the verdict of an assize, before our Lords Justice-general, Justice-clerk, and Commissioners of justiciary, in a circuit court of justiciary, to be holden by them, or any one or more of their number, within the burgh of Inverary, upon the twenty first day of September next to come, N. S. the same James Stewart and Allan Breck Stewart complained upon, both, or one or other of them, who shall be so convicted, ought to be punished with

## James Stewart.

the pains of law, to the terror of others to commit the like  
 execrable crime in time coming. OUR WILL IS, &c.

*Ex deliberatione dominorum commissioneriorum justiciarum.*

ROBERT LEITH.

### LIST OF WITNESSES TO BE ADDUCED FOR PROVING THE FOREGOING CRIMINAL LIBEL.

Crown  
 Witnesses.

1. Mungo Campbell, writer in Edinburgh.
2. John Mackenzie, late servant to the said Colin Campbell of Glenure.
3. Donald Kennedy, one of the sheriff-officers of Argyllshire, residing at Inverary.
4. Alexander Campbell, chirurgion in Lorn.
5. Patrick Campbell, nephew to the said Alexander.
6. Patrick Campbell of Achnaba, chirurgion in Lorn.
7. John Flockhart, writer in Edinburgh.
8. Lauchlen Maclaren, in Cadderly.
9. Donald Maccoll, in Aucharn.
10. Mary Stewart, spouse to the said Donald Maccoll.
11. John More-Maccoll, late servant to the said James Stewart, in Aucharn.
12. Duncan Maccoll *alias* Macewan Duie, in Ardshiel.
13. John Macchombich, in Ardshiel.
14. John Stewart, elder, of Fasnacloich.
15. Charles Stewart, writer in Banavie and notary-publick.
16. James Glass, writer in Maryburgh and notary-publick.
17. Archibald Macinnes, ferryman, of Ballachelish.
18. More Macintyre, spouse to Donald Macdonald, in Balloch.
19. Alexander Stewart, of Ballachelish.
20. John Roy-Livingston *alias* Macanure, in Ballachelish.
21. Duncan Macchombich, in Auchindarroch.
22. John Maccoll, shoemaker in Auchindarroch.
23. Mary Mackenzie, spouse to the said John Maccoll.
24. Niel Maclaren, in Aucharn.
25. John Maccoll, in Auchindarroch.
26. John Maccoll, in Auchindarroch.
27. Mary Maccoll, spouse to the said John Maccoll.
28. John Breck-Macchombich, change-keeper, late in Kintallen, now in Port William.
29. William Stewart, merchant in Maryburgh.
30. Ewan Glass-Mackenzie, residenter in Maryburgh.
31. John Maccorquodale, late in Lettermore, now in Ballachelish.
32. Alexander Stewart, of Innernachyle.
33. Ewan Macintyre, in Duchelly, late herd in Glen-duror.
34. Alexander Campbell, in Teynaluib.

## List of Witnesses.

35. John Maccoll *alias* Beg Maccoll, servant to the said James Stewart, in Aucharn. Crown Witnesses.
36. Dugald Maccoll, likewise servant to the said James Stewart.
37. Ewan Murray, vintner at west end of Lochearn.
38. Colin Maclaren, merchant in Stirling.
39. Sarah Cameron, widow in Lettermore.
40. John Macchombich, late in Ardshiel, now in Keil, in Duror.
41. Duncan Campbell, change-keeper in Annat, in Appin.
42. Anne Maclaren, servitrix to the said Duncan Campbell.
43. Robert Stewart, son to Robert Stewart, miller in Cuil.
44. Duncan Stewart, senior, in Cuil.
45. Dugald Stewart, of Appin.
46. Malcolm Bane-Maccoll, change-keeper in Portnacroish.
47. Anne Maccoll, spouse to the said Malcolm Bane-Maccoll.
48. John Maccoll, late servitor to the said Malcolm Bane-Maccoll, now in Shewna, in Appin.
49. Angus Macdonald, wauk-miller in Achchosragan.
50. Alexander Cameron, sometime forrester of Mamlorn, now in Inneruskievoulin.
51. Thomas Clerk, one of the masons employed in building the bridges upon the high roads leading from Fort-William, sometime residenter in Dunkeld.
52. Dugald Carmichael, formerly in Cuil, now in Auchindarroch.
53. Anne Cameron, servant to the said James Stewart, in Aucharn.
54. Catharine Maccoll, servant to the said James Stewart.
55. James Stewart, younger of Fasnacloich.
56. John Stewart, younger of Ballachelish.
57. Donald Macintyre, in Aucharn.
58. Mary Cameron, spouse to the said Donald Macintyre.
59. Alexander Stewart, senior, in Lagnahaw.
60. Alexander Stewart, junior, in Lagnahaw.
61. Archibald Cameron, son to Allan Dow-Cameron, sometime change-keeper in Maryburgh.
62. John Macdonald, of Glenco or Pollivieg.
63. Allan Stewart, in Laroch.
64. John Stewart, in Laroch, elder.
65. John Stewart, younger, in Laroch.
66. Ewan Macinnes, in Laroch.
67. Donald Stewart, in Ballachelish.
68. Isobel Stewart, relict of Alexander Macdonald of Glenco.
69. Helen Stewart, relict of Allan Cameron of Callart.
70. Donald Rankine, herd to Alexander Stewart of Ballachelish.

## James Stewart.

Crown  
Witnesses.

71. Duncan Macvicar, collector of the Customs at Fort-William.
72. Mr. Archibald Campbell of Stonefield.
73. Solomon Maccoll, merchant in Auchindarroch.
74. Mary Macdonald, spouse to Donald Macinnes, in Lickintuim.
75. Alexander Stewart *alias* Bane Stewart, travelling pack-man in Appin.
76. John Breck Maccoll, servant or bouman to Dugald Stewart of Appin, at Koalisnacooan, in Glenco.
77. Anne Macinnes, spouse to the said John Breck Maccoll.
78. Anne Carmichael, spouse to Donald Macachananich, at Koalisnacooan.
79. Donald Oig-Mackendrick, in Bracklet.
80. James Macdonald, brother to the deceased Alexander Macdonald of Glenco.
81. John Cameron, younger of Kenlochleven.
82. Thomas Baird, sergeant of General Pultney's Regiment of Foot.
83. Archibald Menzies, corporal of said regiment.
84. Margaret Stewart, housekeeper to Alexander Stewart of Ballachelish.
85. Everick Macchombich, spouse to John Breck-Macchombich, late change-keeper in Kintalin, now in Maryburgh.
86. Donald Macintyre, formerly in Aucharn, now in Auchindarroch.
87. Mary Macdonald, sister to Alexander Macdonald of Glenco, deceased.
88. Christian Macintyre, widow in Carnoch.
89. Duncan Stewart *alias* Roy Stewart, junior, in Cuil.
90. Duncan Stewart, change-keeper in Teynahynsaig.
91. John Roy-Stewart, son to the deceased Alexander Stewart, brother to John Stewart of Fasnacloich.
92. Patrick Campbell, surveyor or inspector of the Customs at Inverary.
93. John Macchombich, late in Ardshiel, now in Keil.
94. John Macchombich, in Ardshiel.
95. Duncan Maccoll, in Ardshiel.
96. Captain David Chapeau, of General Pultney's Regiment of Foot.
97. John Macintyre, tenant in Kenlochitive.
98. Malcolm Macintyre, tenant in Dallichelish.
99. Ewan Maccoll, at Koalisnacooan.
100. Margaret Campbell, in Auchindarroch.
101. Mary Walker, spouse to John Maccoll, in Auchindarroch.
102. John Maccoll, shoemaker in Auchindarroch.
103. John Dow-Maccoll, in Auchindarroch.
104. Duncan Maccoll, servant to Mildret Maccoll in Cuil.

## List of Witnesses.

Crown  
Witnesses.

105. Donald Maccoll, in Auchindarroch.
106. Margaret Stewart, in Auchindarroch.
107. Catharine Macphail, in Auchindarroch.
108. John Dow-Maccoll, herd to the said James Stewart in Aucharn.
109. John Maccoll, smith in Aucharn.
110. John MacLaren, in Barnamuik.
111. Duncan Macchombich, late in Barnamuik, now in Lagnahaw.
112. Mary Macchombich, his spouse.
113. Mary Maccines, late servitrix to John Breck Maccoll.
114. John Campbell, in Lettermore.
115. Alexander Campbell, in Sallachan.
116. Alexander Cameron of Glenevis.
117. Allan Stewart of Inverchada, son to the deceased Mr. Duncan Stewart, minister in Athol.
118. James Man, change-keeper or miller in Inverchada.
119. Alan Oig-Cameron, in Arlarish, in Rannoch.
120. Duncan Stewart, travelling chapman in Rannoch, at Arlarich.
121. Alexander Dow-Cameron in Inverchomrie, in Rannoch.
122. Duncan Roy-Cameron, son to the said Alexander Cameron.
123. Alexander Campbell, late in Carragunan, in Rannoch.
124. Patrick Edmiston of Newton.
125. Hugh *alias* Ewan Roy-Maccoll, at Drumlean, brother to John Breck Maccoll, at Koalisnacoan.
126. John Cameron of Fassfern.
127. Angus Cameron, brother to Glenevis.
128. James Drummond *alias* Macgregor *alias* James More, late tenant in Innervonachile.
129. Duncan Drummond *alias* Macgregor, in Strathire.
130. Charles Stewart of Bohalie.
131. Janet Stewart, daughter to Duncan Stewart, uncle to Charles Stewart, late of Ardschiel.
132. John Stewart, tenant in Achnacooan.
133. John Cameron *alias* Macmartine, tenant in Inchabrie.
134. Allan Cumming, miller in Bunrie.
135. Anne Roy Macnab, daughter to the deceased Alexander Macnab, who was brother to John Macnab of Bovain.
136. Hugh Maclean, barber in Maryburgh.
137. Duncan Roy Macmillan *alias* Macilivoil, residenter in Lochargaig.
138. Moir or Sarah Stewart, sister to Duncan Stewart, in Arlarich, in Rannoch.
139. Henry Stewart of Fincastle.
140. Angus Campbell, late in Innerchomrie, now in Edinburgh.

## James Stewart.

Crown  
Witnesses.

141. George Douglas, sheriff-substitute of the sheriffdom of Inverness.

142. — Watt, spouse to William Stewart, merchant in Maryburgh.

143. John Crawford, Esq., lieutenant-colonel of General Pultney's Regiment of Foot.

144. John Breck-Macintyre, herd in Glenduror.

145. John Campbell of Balleveolan.

146. Patrick Campbell, in Auchinsacallan.

147. Donald Bane Maccoll, in Auchinacrosh, in Lesmore.

148. Donald Maccoll *alias* Vic Ean Roy, there.

149. Donald Ferguson, in Corrieyell, in Glenurchay.

150. Duncan Stewart, elder of Auchnacon, in Glenco.

151. Duncan Stewart, younger of Auchnacon, in Glenco.

WILL. GRANT.

Witnesses for  
Defence. LIST OF WITNESSES SUMMONED ON THE LETTERS OF EXCULPATION  
AT THE INSTANCE OF JAMES STEWART IN AUCHARN, AGAINST  
HIS MAJESTY'S ADVOCATE, &c.

1. Angus Mackenrick, innkeeper in Lubnamarst.

2. Donald Macintyre, in Dalness.

3. John Rankine, in Achatrichadan.

4. Neil Rankine, in Lickentium.

5. Alexander Stewart, elder of Ballachelish.

6. Sarah Cameron, widow in Lettermore.

7. John Maccorquodale, late in Lettermore, now in Ballachelish.

8. John Maccombich, in Ardshiel.

9. Duncan Maccoll there.

10. Duncan Maccombich, in Lagnaha.

11. Duncan Maccombich, in Auchindarroch.

12. Dougal Maccombich, late in Ardshiel, now in Auchindarroch.

13. Duncan Maccoll there.

14. John Maccoll, taylor there.

15. John Maccoll, late in Auchindarroch, now in Lagnaha.

16. Duncan Maccoll, late in Auchindarroch, now in Cuil.

17. John Maccombich, late in Ardshiel, now in Keil.

18. John Maccoll, herd in Aucharn.

19. Solomon Maccoll there.

20. Donald Macintyre there.

21. John Maccoll, maltman in Aucharn.

22. Dougal Maccoll, servant to the said James Stewart.

23. John Maccoll, also servant to the said James Stewart.

24. Robert Stewart, miller in Cuil.

25. Hugh Macintyre, pedlar there.

## List of Witnesses.

26. Duncan Stewart, innkeeper in Taynahysaig.
27. Duncan Stewart, younger in Cuil.
28. Ewan Maccombich, packman there.
29. Donal Mackendrick, in Keil.
30. Donald Carmichael there.
31. Archibald Maccombich there.
32. Donald Campbell of Airde.
33. James Stewart of Fasnacloich, younger.
34. Alexander Stewart of Invernahyle.
35. Isobel Maccalman, spouse to John Cameron, weaver in Ardsheel.
36. Donald Cameron, in Coriechurachan.
37. Ewan Glass-Mackenzie, residenter in Maryburgh.
38. William Mason, quarter-master of General Purney's regiment of foot for present lying at Fort-William.
39. George Douglas, Sheriff Substitute of Inverness-shire.
40. Sir Duncan Campbell of Lochnell, baronet.
41. Donald Glass Maccoll, in Cuil.
42. Malcolm Bane Maccoll, change-keeper at Portmacrosh.
43. John Maccoll, late servant to the said Bane Maccoll, now in Shuna.
44. Angus Macdonald, walk-miller in Achosragan.
45. John Stewart, tenant in Achnocoan.
46. Ewan Roy Maccoll, feuer in Glastrim.
47. John Flockhart, writer in Edinburgh.
48. Hew Stewart, residenter there.
49. John Mackenzie, late servant to the deceased Colin Campbell of Glenure, now servant to the said Colin Campbell of Parton.
50. John Stewart, younger of Balmachulish.
51. Dougal Stewart of Appin.
52. Duncan Stewart of Glenbuckie.
53. Duncan Ferguson, servant to the said Duncan Stewart of Glenbuckie.
54. Robert Graham, in Sianchyle.
55. John Wordie of Cambusbarron.
56. Agnes Muschet, spouse to the said John Wordie.
57. Archibald Stewart of Glessingale.
58. John Stewart, younger of Annat.
59. Janet Stewart, sister to Duncan Stewart of Glenbuckie.
60. Mary Stewart, likewise sister to the said Duncan Stewart.
61. James Stewart, sergeant, or late sergeant in General Halket's regiment of foot, now residenter in Ederallickeich.
62. Duncan Stewart, younger, tenant in Achnahardin, Glenfinlass.
63. Walter Macfarlane, tenant there.
64. Evan Murray, vintner at the west end of Lochearn.
65. John Macdonald of Glenco.
66. Isobel Stewart, relict of the deceased Alexander Macdonald of Glenco.

Witnesses for  
Defence.

## James Stewart.

**Witnesses for  
Defence.**

67. John More Macinnes, at Koalisnacoan.
68. John Cameron of Fassifern.
69. Archibald Cameron, son to Allan Cameron, sometime inn-keeper in Maryburgh, at Drumnasaille.
70. Alexander Cameron of Dungallon.
71. Donald Cameron, tacksman of Carnich in Sunart.
72. Alexander Cameron, in Innerouskiviulline.
73. John Maccombich, late miller in Kintalline, now at Maryburgh.
74. Euphema or Errick Maccombich, spouse to the said John Maccombich at Maryburgh.
75. William Stewart, merchant at Maryburgh.
76. Charles Stewart, writer at Banvie.
77. John Cameron, tacksman of Stroan.
78. Evan Maclean, barber in Maryburgh.
79. Allan Cameron, tacksman of Lundavra.
80. Evan Cameron, in Stroanahuishin.
81. John Stewart, possessor of Kilnorrie in Ardnamurchan.
82. Colin Maclaren, merchant in Stirling.
83. Donald Stewart, in Ballachelish.
84. Katharine Macinnes, late servant to Alexander Stewart of Ballachelish, now spouse to Angus Bane Maccombich, taylor in Laroch.
85. John Campbell of Clochombie, late chamberlain of Argyll.
86. Mary Macniccol, his servant.
87. Niel Sinclair, also servant to the said John Campbell of Clochombie.
88. George Ronaldson, serjeant in General Pulteney's regiment, and Captain Lindsay's company.
89. Colin Campbell, change-keeper in Inverary.
90. Archibald Mackeller, flesher in Inverary.
91. Thomas Lieth, soldier in General Pultny's regiment.
92. Andrew Meldrum, likewise soldier in the said regiment.
93. John More Maccoll, servant to the said James Stewart.
94. John Maccoll, *alias* Beg Maccoll, also servant to the said James Stewart.
95. Dougal Maccoll, likewise servant to the said James Stewart.
96. Ann Cameron, servant to the said James Stewart.
97. Donald Rankine, herd to Alexander Stewart of Ballachelish.
98. Katharine Maccoll, servant to the said James Stewart.
99. Mary Clerk, spouse to Colin Campbell, change-keeper in Inverary.
100. David Stewart, brother-german to Duncan Stewart of Glenbuckie.
101. Alexander Stewart, in Auchindarroch.
102. Evan Cameron, servant to John Cameron of Stroan.

JAMES STEWART.

## Crown Productions.

"INVENTORY OF WRITINGS TO BE LODGED IN THE CLERK'S HANDS, Productions.  
AND TO BE MADE USE OF AT THE AFORESAID TRIAL."

1. Commission granted by the Barons of his Majesty's Exchequer to Colin Campbell of Glenure, Esq., to be factor upon the lands and estate of Charles Stewart, late of Ardshiel, &c., dated 23rd February 1748-9.
2. Principal instructions from the said Barons of his Majesty's exchequer to the said Colin Campbell, dated 25th July 1751, relative to his office as factor.
3. Precept of removing and ejection, upon a decret at the instance of the said Colin Campbell, against John Colquhoun and others, tenants of the estate of Ardshiel, before the sheriff of Argyll, dated the 13th April 1752.
4. Office copy bill of suspension presented to the court of session by the said tenants, complaining of the above decret, with sist thereupon, dated 18th April 1752, and principal deliverance thereon of the Lord Haining Ordinary on the bills, refusing the said bill, dated 5th May 1752, with copy answers to the said bill for his Majesty's advocate and the said Colin Campbell the factor.
5. Judicial rental of the estate of Ardshiel, as given into the exchequer by Mr. David Bruce, one of the general surveyors, dated 12th September, 1748, with abstract thereof.
6. Three judicial declarations by the said James Stewart, emitted before the sheriff-substitute of Inverness; two of them upon the 2d and the third upon the 3d Days of June 1752.
7. Principal holograph letter, by Allan Stewart, son to the said James Stewart, addressed to Duncan Stewart of Glenbucky, dated at Aucharn, the 1st of April 1752. Part of the beginning torn off.
8. Principal holograph letter by the said James Stewart to Charles Stewart writer in Auchintour, dated at Inver, the 27th of April 1752.
9. Another principal holograph letter by the said James Stewart to the said Charles Stewart, dated the 14. of May 1752.
10. Principal holograph letter by William Stewart merchant in Maryburgh to the said James Stewart, dated 14. May 1752.
11. Principal holograph letter by the said James Stewart to Mr. John Macfarlane writer to the Signet, dated at Fort-William, the 19. May 1752.
12. Draught letter by the said James Stewart and of an instrument of protest at the tenant's instance, relative to the said decret of removing and suspension thereof.

There is likewise to be produced,

Two guns found concealed near the said James Stewart's house at Aucharn, some days after the murder.

## James Stewart.

### Productions.

Item, A black short coat with silver buttons, found in the said James Stewart's house at Aucharn.

Item, Another black short coat, with silver buttons, with a pair of tartan trowsers, and a powder horn.

Item, The coat, waist-coat, breeches, and shirt which the said Colin Campbell had on when he was murdered.

There is further to be produced,

Two principal declarations by Allan Stewart, son to the said James Stewart, emitted before the sheriff-substitute of Inverness, the 3d of June 1752.

Five principal declarations by Charles Stewart, also son to the said James Stewart, emitted four of them before the sheriff of Argyll, the 22d, 2<sup>d</sup>, and 25th days of May, and one before the sheriff of Inverness, the 4th of June 1752.

Three principal declarations by Margaret Stewart spouse to the said James Stewart, and two by Elizabeth Stewart his daughter, before the sheriff of Argyll, 22d, and 25th May 1752.

WILL. GRANT.

"LIST OF THE PERSONS, NAMES, AND DESIGNATIONS THAT ARE TO  
PASS UPON THE ASSIZE OF THE SAID JAMES STEWART AND THE  
SAID ALLAN BRECK STEWART."

### ARGYLL-SHIRE.

1. Donald Campbell of Airds.
2. Dugald Stewart of Appin.
3. Colin Campbell of Carquhin.
4. John Maclean of Lochbuie.
5. Donald Campbell, younger of Scamnadale.
6. Duncan Campbell, in Oban.
7. Duncan Campbell, at Aross.
8. Archibald Campbell of Knockbuie.
9. Dugald Macdugal of Gallanach.
10. Donald Campbell, bailie of Lochinnel.
11. James Fisher of Duren.
12. Alexander Duncanson of Kills.
13. Archibald Campbell of Ormsary.
14. John Richardson, merchant at Inverary.
15. Duncan Campbell of South-hall.
16. Hector Macniel of Ardmeanish.
17. Archibald Campbell of Clachanseil.
18. James Campbell, late bailie of Inverary.
19. James Campbell of Rascheilly.
20. James Campbell of Rudale.
21. Angus Campbell of Ardlarich.
22. Colin Gillespie of Bailliemoir.

## Jurors Cited.

23. Colin Campbell of Skipnish.
24. Duncan Campbell of Glendaraul.
25. Hugh Campbell of Lix.
26. Niel Campbell of Dunstaffinish.
27. Alexander Campbell of Ballochiel.
28. Colin Campbell of Kildalvin.
29. Colin Campbell of Ederlin.
30. Niel Campbell of Duntroon.
31. Archibald Campbell of Jura.
32. Duncan Maclauchlan of Croich.
33. John Campbell, younger of Ottir.
34. Archibald Campbell of Daill, in Craignish.

### BUTE-SHIRE.

35. Archibald Davie, in Glenrossie, in Arran.
36. John Brown in Glenshervig.
37. Donald Brown, there.
38. Alexander Fullertoun, in Brodick.
39. Thomas Macninch, in Clachlands.
40. Duncan Macmaster, in Lamblash.
41. William Hunter, in Letter.
42. Andrew Macbryde, in Monimore.
43. John Macbryde, in Achincairn.
44. James Stewart, in Mid-Kiskidale.
45. Alexander Stewart, in South-Kiskidale.

CH. ARESKINE.

ALEX. FRASER.

HEW DALRYMPLE.

*N.B.* The execution of the criminal letters, against James Stewart personally, was upon the 21st day of August, 1752, and the executions against Allan Breck Stewart, at Aucharn was upon the 24th day of the said month of August, and at the market-cross of Inverary the 25th day of the said month of August.



# THE TRIAL.

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## *Judges—*

THE LORD JUSTICE-GENERAL (*The Duke of Argyll*).  
LORD ELCHIES. LORD KILKERRAN.

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## *For the Prosecutors.*

### *Counsel—*

The Right Honourable WILLIAM GRANT of Prestongrange,  
*His Majesty's Advocate.*

Mr. JAMES ERSKINE, *Advocate, Sheriff-depute of Perthshire.*

Mr. JOHN CAMPBELL, younger of Levenside, *Advocate.*

Mr. ROBERT CAMPBELL of Asnich, *Advocate.*

Mr. SIMON FRASER, *Advocate.*

## *Agent for the Crown—*

Mr. ALSTON.

## *Agents for the Private Prosecutors—*

Mr. ALEXANDER ROBERTSON and Mr. ROBERT WATT.

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## *For the Pannel.*

### *Counsel—*

Mr. GEORGE BROWN of Colstoun, *Advocate, Sheriff-depute of the shire of Forfar.*

Mr. THOMAS MILLER, *Advocate, Sheriff-depute of the Stewartry of Kirkcudbright.*

Mr. WALTER STEWART, younger of Stewart-hall, *Advocate.*

Mr. ROBERT MACINTOSH, *Advocate.*

## *Agent—*

Mr. STEWART of Edinglassie.

## James Stewart.

Proceedings on First Day, Thursday,  
21st September, 1752.

The official record of the opening proceedings was in these terms :—

“*Curia itineris justiciarii, S. D. N. Regis, tenta apud burgum de Inverarii, vicesimo primo die mensis Septembris, anno Domini millesimo septingentesimo quinquagesimo secundo, N. S. per nobilem et præpotentem Principem Archibaldum Ducem de Argyll, Dominum Justiciarium Generalem, et Patricium Grant de Elchies, armigerum, et Dominum Jacobum Ferguson de Kilkerran, Dominos Commissionarios Justiciarii dicti, S. D. N. Regis.*

*Curia legitime affirmata.*

**Interlocutor.** His Majesty's Advocate moved, that the criminal letters at his instance, for his Majesty's interest, and also at the instance of Janet Mackay, daughter to the honourable Hugh Mackay of Bighouse Esq; and relict of the deceas'd Colin Campbell of Glenure, for herself, and on behalf of Elizabeth and Lucy Campbells her infant children, with concurrence of his said Majesty's advocate, for his Majesty's interest; against James Stewart in Aucharn in Duror of Appin, commonly known or reputed to be the natural brother of Charles Stewart late of Ardshiel, attainted; and Allan Stewart commonly called Allan Breck Stewart, son to Donald Stewart *alias* Vic Ean Vic Allister, sometime in Inverchomrie in Rannoch, and since, or sometime after the eighteenth day of April one thousand seven hundred and forty six, a cadet or soldier in the French king's service, or reputed in this country to have been such, might be called. And the same being accordingly done, and the above Allan Stewart, commonly called Allan Breck Stewart, being oft and diverse times called publicly by the macer of court, and thrice called at the outer door of the court house, to have compeared and underlyen the law for the crime of murder committed by him upon the said deceas'd Colin Campbell of Glenure, in manner at length mentioned in the said criminal letters, he having been lawfully cited for that effect, but not compearing, the Lord Justice General, and Lords Commissioners of justiciary DECERN and ADJUDGE Allan Stewart commonly called Allan Breck Stewart, son to Donald Stewart, *alias* Vic Ean Vic Allister, sometime in Inverchomrie in Rannoch, and since or sometime after the eighteenth day of April one thousand seven hundred and forty six, a cadet or soldier in the French king's service, or reputed in this country to have been such, to be an outlaw and fugitive from his Majesty's laws; and ordain him to be put to the horn, and all his moveable

## Preliminary Proceedings.

goods and gear to be escheat and inbrought to his Majesty's use, for his not compearing this day and place, to underly the law for the crime of murder committed by him upon the deceas'd Colin Campbell of Glenure, as is more fully mentioned in the criminal letters raised against him thereanent, at the instance of William Grant of Prestongrange, Esq., his Majesty's advocate, for his Majesty's interest, and also at the instance of Janet Mackay, daughter to the honourable Hugh Mackay of Bighouse, Esq., and relict of the said deceas'd Colin Campbell of Glenure, for herself, and on behalf of Elizabeth and Lucy Campbells her infant children, with concurrence of his Majesty's advocate, for his Majesty's interest; the said Allan Stewart, commonly called Allan Breck Stewart, having been lawfully cited for that effect, oftentimes called and not compearing.

ARGYLL. I.P.D.

INTRAT: James Stewart indicted and accused at the instance of his Majesty's advocate, for his Majesty's interest, and also at the instance of Janet Mackay, daughter to the honourable Hugh Mackay of Bighouse, Esq., and relict of the said deceas'd Colin Campbell of Glenure, for herself, and on behalf of Elizabeth and Lucy Campbells her infant children, with concurrence of his Majesty's advocate for his Majesty's interest, as guilty, actor, or art and part of the crime of murder, committed in the manner mentioned in the criminal letters raised thereanent, against him, and Allan Stewart, commonly called Allan Breck Stewart, son to Donald Stewart, *alias* Vic Ean Vic Allister, sometime in Inverchomrie in Rannoch, and since, or sometime after the eighteenth day of April, 1746, a cadet or soldier in the French king's service, or reputed, in this country, to have been such."

On the motion of the Lord Advocate, the indictment was read.

LORD JUSTICE-GENERAL—James Stewart, you have heard the criminal letters against you read. What have you to say to them?

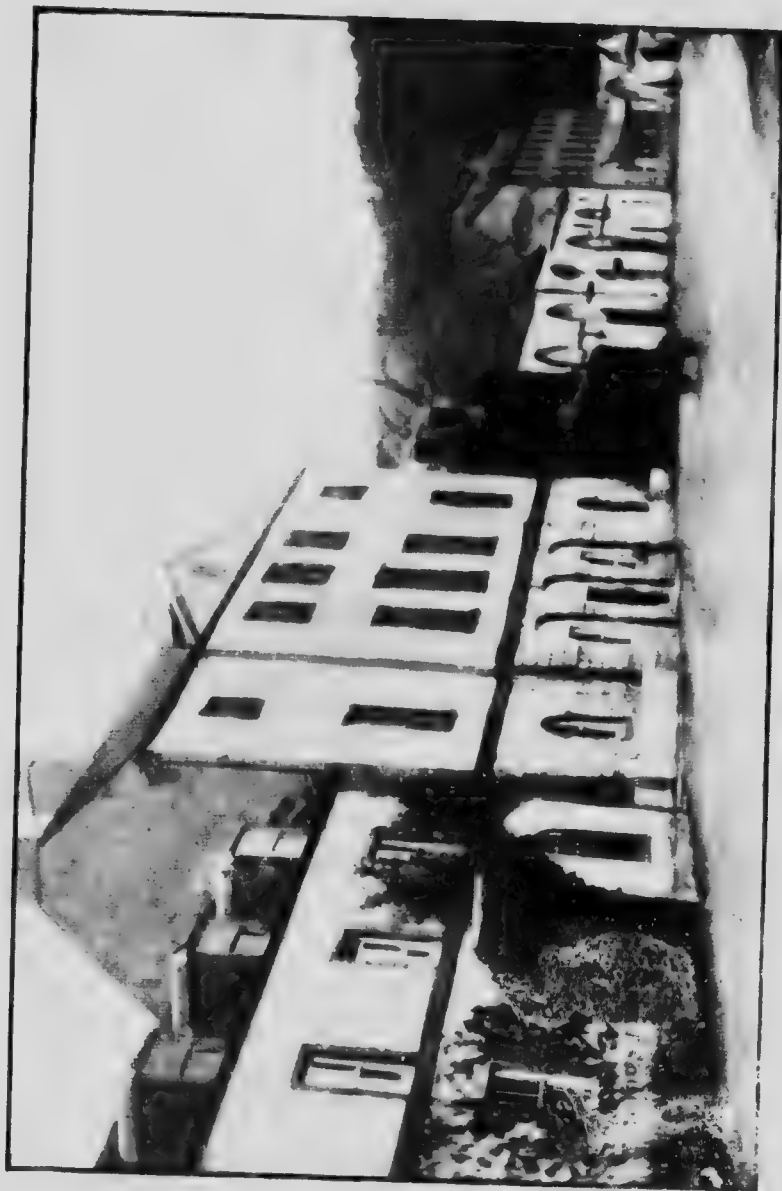
JAMES STEWART—My Lords, I am not guilty of the crime of which I am accused, and I refer to my lawyers to make my defence.

Mr. WALTER STEWART, for the pannel—My Lord Justice-General, I appear as counsel for this prisoner, James Stewart, who now stands at your Lordship's bar, charged as being accessary to one of the foulest and most barbarous murders that has occurred in any country. the murder not only of an innocent gentleman, but, as will be proved, the pannel's own intimate friend, and that without the smallest provocation, save what greatly enhances his guilt, viz., Glenure's being in the faithful discharge of his duty in an office entrusted to

## James Stewart.

**Mr. Stewart.** him by the public. He is charged with causing Allan Breck Stewart to lie in wait for this unhappy gentleman, and take him off by a base and inhuman assassination. I am sensible, my Lord, that the pannel, accused of a murder attended with so many aggravating circumstances, must appear before your Lordship, his jury, and the world in a very unfavourable view. A certain indignation naturally arises in every humane breast against one suspected of so horrid a crime, and this must not be a little increased by the malicious stories and insinuations industriously spread, which the pannel, from his close confinement, has had no opportunity of contradicting. But now, as he has put himself for his trial, upon God and his country, by pleading "not guilty," until that country finds him guilty, the presumption is for innocence. This he has a title to demand. All I shall ask, however, is that, as I know his judges, so I hope his jury, and all who now hear me, will lay aside any prejudice against him, and will form no opinion until the circumstances of the libel, the defences which I am now to offer against it, and the proof of both be attentively considered. For myself, my Lord, I must say (and I believe I may say the same for all the gentlemen on the same side with me), did I, after the strictest inquiry, suspect the pannel to be accessory to this murder it would be the last action in my life to stand up in his defence; but, my Lord, we have gone through this libel with the greatest attention, and have taken a view of the several facts which, after a precognition of above a thousand witnesses, are set forth to support the charge against the pannel; we have heard from the pannel's own mouth his defences against this charge, which he avers he can prove; we have heard, from the unprejudiced, the general character he bears in the world, and, from the whole, cannot help concluding that he is not guilty. We look upon ourselves as standing up for innocence when defending this pannel. It is therefore our duty to defend him with that warmth which innocence claims as its due.

In the entry of this trial, my Lord, I cannot help complaining of most intolerable hardships which this pannel has undergone since May last, when he was first incarcerated. My Lord Advocate's humanity, his tenderness to pannels, I can, from my own little experience in trials, subscribe to. The unjustifiable steps I am now to complain of I must therefore lay to the charge of the private prosecutors. I dare say, my Lord Advocate as little knew of them, as he will now, when he hears, approve of them. The pannel, since the month of May last, has been kept in the closest confinement. For the first six weeks no mortal was allowed access to him; after that, indeed, for some short time admittance was given to his wife and one or two more; but any who could be thought proper persons to prepare defences for his trial were carefully denied



The old Inveraray Court-House.



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access to him; and, again, for a considerable time before his trial he was close confined, and all admittance refused. When his counsel came to this place and wanted to see him, we were told that none were to be admitted without a warrant from the Duke of Argyll, and a petition was actually drawn to be presented to your Grace when a message came allowing us access. His sons and his servants, too, have suffered the same close imprisonment, and all this not only contrary to humanity, but directly in the face of the Act of Parliament, 1701, which discharges close imprisonment after eight days, under the severest penalties. By the precaution of this private prosecutor, too, the bar has been in a manner shut up against this pannel; all the old, experienced counsel, though not brought to maintain the charge against him, have been retained from giving him their assistance; otherwise, in all probability, I had not now been employed to open his defence. The pannel's house and his repositories have been three several times searched and papers carried off by near relations of the prosecutors, attended by a military force, and without any warrant. His wife and his sons, who, by the laws of God and man, cannot be called as witnesses against him, have been examined upon oath, some of them five different times, to catch at any discordance, had there been any, in their declarations: and these very declarations are now proposed to be brought in proof against the pannel, while the declarants themselves are alive, and ought, by the fundamental laws of this kingdom, to be examined in presence of the pannel and jury. These are hardships, my Lord, which, thanks be to God, meet with no encouragement in this, now a free, country. The time was, indeed, when the feeble law was unable to protect the innocent, when the rules of justice were broke to pieces by the ruffian hands of power; then our unhappy country groaned under the intolerable yoke of arbitrary power; then was scarce the form of a trial; the best, the greatest of our country, even an Argyll, fell a sacrifice to the will of tyranny. But now, my Lord, the days which our fathers wished to see, and did not see, we have the happiness to enjoy. A fair trial, which the noblest could not obtain, the meanest are now entitled to, under the protection of laws, guarded by a Government ever watchful for the good of its subjects, under which the keenness of private prosecutors will meet with no countenance or encouragement. The pannel, enjoying the privileges of every free-born Briton, is now to stand trial before the judges and jury of his country, and, as his judges will show the greatest impartiality, he expects the same from the gentlemen of the jury. They will judge of the proof brought before them, having in their eyes the example of Almighty God, by whose holy name they have sworn to do justly, before whose awful tribunal there is no judgment formed from names or personal prejudices, but every man is judged



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## James Stewart.

**Mr. Stewart** according to his works. They will consider that, as they are to answer to God, so they have to answer to the world, who will make a narrow and impartial scrutiny into their verdict. At the same time I cannot help saying, that, amid all the hardships this pannel has suffered, I hope it is one piece of good fortune that he is to be tried by gentlemen of the same county with himself, who, from their more particular knowledge of the pannel and his character in the world, should be best judges what proof is necessary to fix upon him so black a crime.

In order that your Lordships may more fully understand the defences now to be offered for the pannel, I will beg leave to lay before the Court an account of the facts which have given rise to this prosecution as they really happened, and as we have got them from the pannel's own mouth at a time when it was little his interest to hide the truth from us. The pannel, my Lord, was in possession of a farm on the estate of Ardshiel called Glenduror, and was tacksman of another called Lettermore, which he had sub-let for about £70 Scots a year, when Glenure was appointed factor on the estate of Ardshiel in February, 1749. That gentleman continued the friendship which he had before entertained for the pannel in a very particular manner. He gave him the management of the whole estate of Ardshiel, power to put in and remove tenants, and to raise the rents as he should think proper, and took yearly from the pannel his bill for the rent of the estate at which it had been surveyed by the Barons of the Exchequer, leaving him to apply the overplus to the use of Ardshiel's children. This agreement will be instructed by discharges and letters under Glenure's own hand.

Some time before Whitsunday, 1751, Glenure applied to the pannel to yield the farm of Glenduror, which he then possessed, to Mr. Campbell of Balleveolan, a particular friend of his, who offered an additional rent. This the pannel immediately complied with, without waiting a warning, and took the farm of Aucharn, where he now lives, from Mr. Campbell of Airds, but still continued to uplift the rents of Ardshiel, in terms of his agreement with Glenure. Some time in April last Glenure executed a warning against the sub-tenant in Lettermore to remove from that farm at Whitsunday, 1752, and likewise against several other tenants of the lands of Ardshiel. The pannel does acknowledge that he did expostulate with Glenure upon this, telling him he thought it hard to turn them out, since they offered to give more additional rent than any others would, and likewise to take the oaths to the Government. But Glenure still persisted in his resolution, upon which the pannel, being occasionally in Edinburgh, at the desire of the tenants, made out a short Memorial of the fact, and presented it to one of the Barons of Exchequer, who disapproved greatly of Glenure's procedure,

## Preliminary Proceedings.

but could do nothing towards putting a stop to the removing, **Mr. Stewart** as a quorum of the Barons was not to be had until the next Exchequer term; but he kept the Memorial, promising to represent the case to the whole Barons, and added that he had no doubt but that they would give an order to the factor to continue the tenants in their possessions. The pannel upon this advised with counsel how the tenants might be kept in possession until the Exchequer term, and, by their advice, applied for a Suspension of the removing to the Court of Session, and a Bill of Suspension being accordingly presented, a Sist was obtained, and the Bill ordered to be answered, which Sist was intimated to Glenure upon the pannel's returning into the country, and he, not knowing the forms, having carried with him the principal Bill of Suspension, and Glenure immediately giving in Answers, the same were advised without the Bill, and it was refused. This scheme of a Suspension having failed, and Glenure persisting in his resolution of ejecting the tenants upon the term day at which they were warned to remove, the pannel, upon a second application from the tenants, wrote to Alexander Stewart, notary public, to come, upon the 15th of May, that they might protest and take an instrument against Glenure if he proceeded to ejection, and when Alexander Stewart excused himself, the pannel sent a letter by express, on the 14th May, to Charles Stewart, notary in Auchintowr, to come on the same errand, and, in a postscript, bade him tell William Stewart to send down £8 sterling to pay four milk cows which he had bought for his use at Ardshiel, and which the tenants had refused to deliver until they got the price, though William Stewart had wrote for them. This postscript is laid hold of by the prosecutors as a circumstance to fix this murder upon the pannel. But this, my Lord, I am not surprised at; other letters of his share the same fate, though, if possible, less criminal than this one; by what conjuration or what mighty magic they can be made so, I own I cannot conjecture.

The pannel, in further prosecution of this plan of taking a protest, on Thursday, the 14th, had engaged James Stewart the younger of Fasnacloich, and John Stewart, younger of Ballachelish, to be present on the 15th and witness his protest, but on the Thursday evening the pannel received the melancholy accounts of Glenure's being murdered in the wood of Lettermore. These are the facts which gave rise to that inveterate malice which the libel says induced the pannel to conspire the death of Glenure. The words are—"And, on account of the said Colin Campbell's accepting the said office, and of the above mentioned and other, his proceedings, in the faithful discharge of the duty thereof, the said James conceived resentment," &c. How unjust this conclusion is I do humbly submit to your Lordships. After Glenure was made factor,

## James Stewart.

**Mr. Stewart** your Lordship sees, they continued in the greatest friendship; you see the pannel managing the estate of Ardshiel under Glenure, removing from his possession of Glenduror, at Glenure's desire, without putting him to the trouble of a warning, and going and residing under Mr. Campbell of Airds. He had no possession in Ardshiel estate, as Lettermore was sub-let; his management of the estate was not taken from him, and he was still allowed to remit part of the rents to Ardshiel's family. He has no connection by blood, or otherwise, with the tenants warned to remove; there is not so much as one of them of his name. The estate was annexed for ever to the Crown, and was in a few months to fall into the hands of Commissioners appointed by His Majesty, who would probably restore the tenants, as they offered more rent than those put in by Glenure. Can any mortal believe that the pannel, because Glenure was to execute a removing against these tenants, should enter into so execrable a design as to assassinate that gentleman by the hands of Allan Breck on the 14th, when we see him pursuing quite another scheme, sending for a notary and witnesses to take a protest against him on the 15th? In all cases of murder, I do humbly apprehend, it is of necessity that there should be malice aforethought, which is the essence of, and constitutes, the crime, and all passions, particularly one of so extraordinary a nature as this malice, must have had some cause. I do submit to your Lordships if there is the smallest appearance of that malice, or anything like a cause assigned for it. But, even taking the story as it stands in the libel, it is a tale that can gain credit with no mortal. What earthly purpose could the pannel serve by such a desperate piece of villany? Would the murder of Glenure prevent the removal of the tenants? Would not the murder of Glenure deprive him of the liberty which that gentleman had given him to uplift the rents? Would it not put it out of his power to help his brother Ardshiel's family? The pannel is allowed to be a judicious man, prudent in his actions beyond most men of his rank in the world. Can it be believed he would do a thing so directly contrary to his interest? Suppose him capable of the crime, we must suppose him the greatest fool, as well as the greatest monster, that ever disgraced humanity. But is this his character? No, my Lord; as he is a sensible man, so all who know him will say he is a humane, peaceable, good-natured man, looked upon as a father where he lives; strangers were happy to get their children under his care, as, in fact, he is tutor and curator at this very time to several orphans, who have not the smallest relation to him.

Here, my Lord, I will, for a little, leave the pannel, and give an account of Allan Breck Stewart, who is charged as the committer of this murder, having entered into a wicked con-

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spiracy with the pannel for that purpose. Whether he was the **Mr. Stewart** actual murderer or not, the pannel knows not; neither is it my business to say. I shall only point out what connections were betwixt the pannel and Allan Breck, leaving it to your Lordship and the jury to judge if the circumstances of these connections as I shall now open them, or even as they are laid in the libel, are sufficient to fix upon the pannel his being a conspirator in this execrable plot. At the same time, there is no question but the prosecutors must fix the actual murder upon Allan Breck, otherwise the charge against the pannel entirely flies off.

This Allan Breck Stewart, my Lord, was the son of one Donald Stewart, a particular friend and distant relation of the pannel's. He died while his children were infants, and upon his deathbed committed them to the care of his friend, naming him tutor and curator to them. The pannel faithfully executed this trust, took care of the children's education, and managed their effects to the best advantage. Allan, turning extravagant when he grew up to man's estate, and having spent what was left him by his father, enlisted in His Majesty's service without clearing accounts with the pannel, who used to supply him with money and pay little debts for him even after he became a soldier, although he knew he had already given him more than his patrimony. This the pannel thought he owed to the memory of his deceased friend. Breck continued in His Majesty's service until the battle of Prestonpans, where, being taken prisoner by the rebels, he enlisted with them, continued with them during the rebellion, and afterwards made his escape into France, and enlisted in the French service, where he still continues. Since he first went over he has been in use, now and then, of coming back to Scotland and staying a few months with his relations; he commonly landed first at Edinburgh, and lodged in the house of one Hugh Stewart. There he seldom went out but in the night, and more than once narrowly escaped being apprehended as a deserter. When he came up to Rannoch or Appin, among his relations, he used to stroll about without any settled residence, and wherever he came he generally threw off his French clothes, as they were remarkable and improper for that hilly country, and borrowed from any acquaintance wherever he happened to be at the time. Among others, he used to visit at the pannel's house, though he came seldomer there than to other places in the neighbourhood, as the pannel used to take a good deal of freedom in blaming his conduct and extravagance. About the beginning of March last he came over from France, was at the houses of Balachallan and Annat, and went from thence to Glenbucky's house, where he continued until the end of March, and while there he threw aside his French clothes and wore clothes belonging to Glenbucky or his brother. In the

## James Stewart.

**Mr. Stewart** beginning of April he came to the pannel's house, immediately before the pannel went to Edinburgh, and, staying a day or two, went off with a dark-coloured short coat with clear buttons and other parts of the country dress, which he had picked up about the pannel's house, and continued strolling about the country in that dress, until the latter end of April, when he returned to the pannel's house and stayed a single night. On the 11th May, about one o'clock afternoon, he returned, and found the pannel upon a field, where his servants were covering potatoes. They continued there about a quarter of an hour in the hearing of the servants, when an express came from Mr. Campbell of Airds to the pannel desiring him to come to him at Keil upon business; upon which the pannel walked with Breck from the field to the house, at about fifty yards' distance, and, leaving him there without going in, went directly to Keil, continued there until betwixt ten and eleven at night, when, returning home, he found there several strangers besides Allan Breck. They supped 'l together and continued in one room until they went to bed. Breck lay in the barn with the pannel's sons and one Archibald Cameron. The pannel had no private conferences with him; they were not one moment by themselves, nor ever in company, but before the family and the strangers. Early in the morning of Tuesday the 12th, before Breck was out of bed, and without seeing or speaking with him, the pannel went to Appin's house, and Breck was gone before he returned, and the pannel has never seen him since. What clothes he carried off he does not know; but he has authorised me to say that what is laid in the indictment may be true, that he went off in the short coat which he used before; that he went to Ballachelish, from that to Glenco's house, and then to Callart, and on Wednesday came back to Ballachelish, where he stayed all night. On the Thursday in the forenoon, he assisted Ballachelish's servants in carrying out dung, and after dinner he got a rod and went a-fishing, continued some time in sight of Ballachelish and his servants who were carrying out the dung, but going a little up the water a rising ground intercepted their view and they saw no more of him.

This, my Lord, is a true account of the connection betwixt the pannel and Allan Breck preceding the murder, as it will come out upon proof. I will draw this conclusion, that this horrid conspiracy must have been laid and concerted between them in a few seconds, while the pannel was walking from his potato ground to his house at fifty yards' distance, for at no other time had they any private conference. The changing the clothes, your Lordship sees, was altogether unknown to the pannel, and what Breck was in use to do at the pannel's house and over the whole country. But, taking the story as it stands in the libel, who can possibly believe that the pannel would have given

## Preliminary Proceedings.

Breck his own clothes to disguise himself for committing this murder, or that Breck would have put on this disguise four days before the murder happened? The libel says Glenure was certainly expected on the Thursday to return from Fort-William to Ardshiel. Would Breck then have put on his disguise on the Monday and gone about publicly in it? No, surely, my Lord. Children would have conducted a plot better than this. And yet upon this circumstance of changing clothes, as incredible as it is falsely represented, stands one half of the prosecutor's hopes (if the libel contains them all) of fixing this crime upon the prisoner.

I proceed to lay before your Lordship the sequel to Glenure's murder. Betwixt six and seven on Thursday evening Mackenzie, Glenure's servant, called at the pannel's house and informed him that his master was shot dead in the wood of Lettermore. The libel says that the pannel appeared nowise surprised or concerned at the news; and that neither he nor any of his servants went to look after the corpse. Mackenzie will not, dare not, say so. The pannel showed that surprise, that deep concern, which every innocent man must feel at so unexpected and melancholy an accident. He directed Mackenzie the nearest road to Glenduror, to call Mr. Campbell of Balleveolan, Glenure's friend, and, in the meantime, sent such of his family as could be spared and several of his neighbours to take care of the corpse. On Friday morning, the day after the murder, the pannel received a message from Allan Breck by Donald Stewart, nephew to Ballachelish, who had seen him in the fields about nine o'clock the evening before, when Breck told him that, as Glenure was killed, there would be a strict search for his murderer, and he being a deserter, it was proper for him to keep out of the way; he was therefore resolved to leave the country immediately; that he would hide himself for a day or two in the desert of Koalishnacooan, and, as he had no money, he begged of Donald Stewart to go to the pannel and inform him of this, and entreat him to send a little money to him at Koalishnacooan. Donald Stewart then said to him that he hoped he had no hand in Glenure's murder himself. Upon which he took God to witness he had none, but his being a deserter to the Highland army was the only cause of his absconding, as he was sure he would be hanged without mercy if he was seized. Upon receiving this message, the pannel sent Alexander Stewart, packman, to Fort-William, to one William Stewart, a merchant there, to get five guineas from him, telling him at the same time that it was for the use of Allan Breck Stewart, who was going off the country, as he was a deserter, to shun the search which would be made for the murderer of Glenure. Upon the packman's return he found the pannel in the custody of a party of soldiers; and as he had got

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Mr. Stewart but three guineas from William Stewart at Fort-William, the pannel gave him other two, and bid him go to Koalisnacoan, where he would find Allan Breck, and give him the five guineas. Upon which the packman went home with the pannel's wife, who, he is since informed, gave him Breck's French clothes, which he had left at the pannel's house the Monday before, but which the pannel knew nothing of. As to the long episode in the indictment narrating the conversations betwixt Allan Breck and the bouman, as the pannel knows nothing of them, they shall pass unnoticed by me. Only, I beg leave to make this single observation to the gentlemen of the jury, that, when this part of the libel comes under their consideration, they will observe that it can be proven by the oath of but one witness, and that witness swearing only to what he heard Allan Breck say; consequently, the mistaking one word must be of the most fatal consequence, for this reason—hearsay evidence is altogether rejected in law. They will likewise consider that what Allan Breck says is said by one who wanted to clear himself, to the bouman, of the murder of Glenure, which the bouman charged him with, for which reason he might be tempted to throw out insinuations against others. Let the jury keep these hints in their eye, and let them give what weight to this part of the libel their consciences can allow them. The pannel was taken into custody on the 16th; on the 19th it was rumoured in Fort-William, where he was incarcerated, that Allan Breck was the murderer of Glenure. No sooner does the pannel hear this but he writes a letter to Mr. Macfarlane, Writer to the Signet, expressing the greatest abhorrence and detestation at the murder, tells him that Allan Breck was suspected to be the committer of it, as he was that day seen near the place where Glenure was killed, and immediately disappeared. He expresses his desire of having him brought to justice, gives a particular description of his looks and dress: and, further, says he was probably gone south, to take the first opportunity of going abroad, and that he commonly lodged in the house of Hugh Stewart at the back of the Fountain-well, when he came to Edinburgh. This letter, too, is brought as a point of ditty against the pannel. What strange and unaccountable torturing of the most upright actions must there be to make this criminal! This pupil, this relation, this friend's son of his, whom he had supplied with a little money to keep him out of the hands of the military law as a deserter, no sooner does he hear him named as being guilty of this horrid murder but he does all in his power to have him brought to justice; strange it is, indeed, to make this a crime! What should the pannel have done? Should he have concealed the suspected murderer? No, my Lord, he acted a more honourable part, such a part as this Court will

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approve of, such a part as every member of it would have acted Mr. Stewart himself.\*

As I have taken up too much of your Lordships' time already, I shall but just mention such defences as occur in point of law, leaving them to be insisted on by the gentlemen who are to support me.

And, in the first place, however willing the pannel may be to stand the issue of his trial, it is our business, as counsel for him, to lay hold of every handle against it. I therefore submit to the Court whether this pannel, who is only charged as accessory, can be tried before the principal, Allan Breck, be first discussed. I do most humbly contend he cannot—*Primo*, because, if the contrary practice were allowed, probation might be led against the principal, though absent, contrary to the fundamental law of this nation: and it must first be proven he, the principal, committed the crime, *primo debet constare de corpore delicti*, before the accessory can be convicted. *Secundo*, if the accessory must defend the absent principal, it may be of the most fatal consequence to both, though innocent. The principal's greatest enemies may be led as witnesses, and such defences as would have been sufficient to exculpate him entirely may be omitted. *Tertio*, these principles are followed by the opinions of all lawyers who write upon the criminal law, and likewise by the practice of neighbouring nations, particularly that of England, where the principal must be attainted after verdict or confession before any judgment can be given against the accessory. But, *quarto*, what I now plead I humbly apprehend to be the law of Scotland, for so it is expressly said, Reg. Maj. ch. 26 b. 4. Quon. attach. ch. 83, and 29 stat. David. II. And, agreeable to these, is the opinion of our great criminal lawyer, Sir George Mackenzie, laid down in the strongest terms in his article Art and Part, paragraph 9th. In the second place, I must object for the pannel to the relevancy of this libel, that the facts and circumstances mentioned in it, though they should be fully proven, are not sufficient to infer his being accessory to this murder. Every libel is a syllogism; the major proposition contains the crime and the laws against that crime; the minor contains the facts charged against the pannel; and the conclusion is that, from these facts, he is guilty of the crime, and deserves to suffer the pains of law. Now, if

\* The author of the Supplement (*q.v.*) asserts that—"Here Mr. Stewart was stopped by the Duke of Argyll for saying that he, or any of the other two judges, would have acted such a part." "How far this expression of Mr. Stewart's needs any apology," he continues, "is referred to the reader. . . . It must not be forgotten that the sagacious pannel himself said to one of his agents, on Mr. Stewart's being thus interrupted, 'You may do for me what you will; but I know my fate by what the Duke of Argyll has just said to Mr. Stewart.'"

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**Mr. Stewart** the facts charged do not amount to the crime, the conclusion must be false, and the libel irrelevant. This, I humbly apprehend, is the present case. From the above narration of the facts, and what observations I have already made upon them, I hope your Lordships will be of opinion that the circumstances charged in the libel are so extremely vague and trivial, that they are not sufficient to bring the pannel under so much as a suspicion of being guilty of this horrid crime laid to his charge.

If your Lordships shall think proper to reject these defences, and to remit the pannel on this indictment to the knowledge of an assize, we humbly hope you will allow us a proof of all facts and circumstances that can tend to his exculpation, particularly of his friendship with Glenure, of Allan Breck's being a deserter, and being in use to put off his French clothes and put on clothes belonging to the family where he happened to be at the time; of the pannel's having no private conference with him preceding the murder; of the message which the pannel got from him after the murder, bidding him send him a little money to Koalishacoan, where he was going; and, in general, of all other defences that may occur as necessary to the pannel in the course of his trial. I will conclude, my Lords, with a single word to the gentlemen of the jury, that the more flagrant, the more atrocious any crime is, the more clearly and distinctly they will require it to be made out to them; that, as this crime is proposed to be fixed upon the pannel by presumptive evidence alone, they will be cautious in distinguishing betwixt such presumptions as are conclusive and such as are not so; between such presumptions as can arise from no other cause but the pannel's being in a conspiracy to murder Glenure, and such as are more naturally construed to have arisen from other causes. If they find such presumptions as that they can, before Almighty God, bring in a verdict of "Guilty," it is their duty to do so, and the law will have its vengeance. But let them have this always in their eye, that better twenty guilty escape than that one innocent man should suffer death by their verdict.

**Mr. Macintosh** Mr. ROBERT MACINTOSH, for the pannel—My Lord Justice-General and Lords Commissioners of Justiciary, I appear also to contribute my small mite towards the defence of this pannel who has the misfortune to be accused of a crime which everybody must admit to be of the deepest dye, and, as laid in the indictment, attended with the most aggravating circumstances, and I do it, my Lords, not out of an opinion of my being in any degree equal to the task, a share of which I have undertaken, but rather that a poor man, standing trial for his life, may not be absolutely destitute of assistance when uncommon endeavours have been used to deprive him of abler help.

My Lords, I dare say, every one who speaks in this cause, on whatever side, will begin by expressing a detestation of the

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crime now charged against the pannel, if not in accusing the pannel, yet, in this we shall all agree to condemn the miserable person whose conscience accuses him of it, whether he now stands at the bar or whether he flies from the avenging sword of justice. I must acknowledge that if the pannel has been guilty of, or accessory to, this murder, beyond all controversy it constitutes him one of the greatest criminals that this or any other country can afford. Murder is a heinous crime, whether it is the fate of the eminent or the obscure. But this murder seems to be a complication of all guilt, and as my duty calls me to plead in defence of one labouring under such an accusation, I cannot do it but with the utmost concern. The very mention of such barbarity and iniquity as was just now rehearsed could not fail to move every human breast, but the reading of an indictment such as we have a little ago heard is enough to inspire horror even in the innocent. It is still harder upon me when I consider the unhappy sufferer in that dreadful scene which is now to be the subject of trial; one against whose life I should be the last man to excuse the smallest attempt; one whom I knew, whom I regarded, whom I had the honour to be in friendship with; his death, had it been common, would have affected me, but his murder afflicts me. I sincerely regret it for his own sake, for the sake of his friends, for the sake of the poor, disconsolate lady who now weeps over her widowity and the orphan state of her infant children; I regret it for the sake of the whole land that stands polluted by the cruel shedding of innocent blood; and in a particular manner do I regret it for the sake of the Highlands of Scotland, for which I own, from private connections, I cannot help having a regard, and which I am afraid have by this unlucky accident suffered a deep political wound, that it may take time to rub off the effects of, as being able to furnish so eminent an instance of barbarism, in spite of the noble attempt of the Legislature and of all in the Administration to polish and civilise them, to reduce them to the righteous plan of the Government of this country and to a constitutional equality with the rest of the United Kingdom.

My Lords, for these reasons do I most heartily join in deploring this fatal catastrophe. At the same time, my Lords, the defence I am now to plead fixes my attention upon a more agreeable prospect—that of innocence, and not of guilt, and the importance of the issue justly challenges my most sanguine efforts. We have before us the life and fortune of a man, a countryman, I believe an innocent, though an accused, one—I must believe him innocent, not only as I am yet ignorant of any proof that I think should convict him, but more as I have not been able, in a very strict investigation, to discover from himself any symptom of guilt: and as the persuasion of

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**Mr. Macintosh** innocence may give courage to defend, so I persuade myself I need make no apology, if I am able to speak with that earnestness and freedom that become the consequence of what is at stake. And, on the other hand, I hope to be excused if I fail in that accuracy and distinctness which I could wish to observe from a just regard to the dignity of this High Court, and to the presence of a crowded and, I dare say, an interested audience, who are ready to swallow with greediness every word that shall be spoken on this subject.

My Lords, before I go further, I cannot omit observing what I am extremely sensible of, and that is, the disadvantages under which this pannel enters upon a trial for himself, and all that is dear to him in this world, for what concerns all that is precious to him in another; disadvantages which we share in who appear as his counsel. But, when I say so, I would not be understood as meaning to insinuate any reflection upon the conduct of the honourable gentleman who prosecutes for His Majesty—he does the duty of his office, the duty which he owes to his King and country, and gave an early proof in this matter of that candour for which he is remarkable on all occasions, by turning a general indictment into a special and circumstantiate charge. But, to use his own words, when hindered from doing what his humane inclination equally led him to, his Lordship is here but half a pursuer—there are others concerned in carrying on this prosecution, and I am afraid their just resentment of a murder, which they had all the reason in the world to be zealous in searching out the committers of, has made them unguarded to measures which I should be sorry to see retaliate, and pushed them beyond the bounds of what I would call humanity, perhaps think justice; and yet, while I cannot approve of their conduct, I am loath, if I could avoid it, to be severe against it, not knowing, whatever I now think, how far rage might have got the ascendant of reason within myself, if in their place. One thing is obvious, that though it is true that the justice of our law agrees with the common law of reason in presuming every man innocent till he is proved guilty, yet we have reason to fear we come here oppressed with prejudice, to create and propagate which, against this unfortunate pannel, no pains, no expense, have been spared, with manifest intent to prejudice him in his trial; and in this have some people been wise in their generation, well knowing that as presumed innocence is a great advantage in a trial, so believed guilt is no small step to conviction, and often anticipates the just foundations of it, which can arise only in proof. When I see and am sorry for this, my Lords, in one view, yet do I most rejoice at it in another, as it shows the weakness of the cause that has needed such artificial feet to support it, even in the beginning, and which being removed,

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as I hope they soon will be, the superstructure built upon the false basis will also fall. There are other things, too, which the law of the land would entitle us to complain of, and which a few years' more experience might make it better become me to exclaim against—a close confinement of the pannel contrary to the sacred charter of liberty which this nation boasts of, and which illegal proceeding was only removed of late by the interposition of this Court, imprisonment of witnesses to be adduced against him, where none had access to them but the private prosecutors or their agents, removed at a distance from the check of my Lord Advocate's superintendence, whose office, though it entitles him to investigate the proof of public offences, yet renders a privilege, dangerous to be indulged to every injured party, safe in his hands. The pannel has had but short warning to prepare for his trial, though he was at great distance from the capital, from which only he could have counsel and assistance, and it is but very lately since his counsel had access to see himself: not for some time after we were in this place. These things I only mention, as my brother has already fully opened them, and I mention them, my Lords, as what may have some weight with the jury who are to try the pannel (and whom I now consider myself as addressing) to remove the prejudices that are so naturally, though insensibly, imbibed without doors, and which especially arise in the mind from the unavoidable, though inconvenient, situation in which a supposed criminal must appear, even when as yet the law presumes him not guilty, loaded with irons and surrounded with guards.

My Lords, I do not mention, as a disadvantage to the pannel, the place of his trial. I think it can be none; there are reasons why this place may be more proper for the trial than any other, whether the pannel be guilty or innocent, that he may be either acquit or condemned, and justice may take place where the crime was committed. And one advantage the pannel most surely profits of by the trial being here, viz., the presence of the prince who presides in it, and who, in a special manner, is the father of his own country, as he justly appears to be of this part of the kingdom. This of itself is more than sufficient to balance a disadvantage, were it possible to suppose any could arise from the opportunity that affords it; at the same time I would, with great deference, observe (and I hope I may do it without giving offence, which I am sure I do not mean to do), that there may be something in this which calls upon the jury to be cautious, and I hope an attention to it will have the effect to make them rather lean to the favourable side than be disposed to make any stretch against the pannel. It is the privilege of the subjects of this country to be tried by one another, yet, when we have this advantage (and it is an

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**Mr. Macintosh** inestimable one), still it is to be tried by men of like passions, i.e., like infirmities with ourselves—and all men are more or less susceptible of prejudice. I hope, however, I may safely trust to the honour of such a jury as will be put upon the pannel's trial that they will, if any such there are, lay aside all regard to country alliances or connections, divest themselves of all prejudices, and sit down to the trial with a candid resolution to yield only to the force of truth, desiring rather to see innocence thereby vindicated than guilt, unwished-for guilt, condemned, and inclined to give the cast of favour on the favourable side, unless the proof shall come out very clear and convincing. Trials in this country are open and public, and the eyes of the world are a check both upon judges and jury; and as this murder has been, and justly, the subject of an extended speculation, so will the trial for it. I hope, be the issue of it what it will, it shall be so conducted as to reflect nothing on any concerned in it, and I shall only add, that, could I suspect that the law of my country or the Court could put any on the pannel's jury who would overlook their obligations to impartiality (which, I dare say, is impossible in the present case) I would put such in mind that, if they have no regard to the pannel, they should regard themselves, for, as the old philosopher said, "Nobody is happy before he die." What is the pannel's fate to-day may be ours to-morrow, and what is proof against him may be against another, long after this. Every trial, therefore, though it presently affects only those who are under it, is, in a material sense, the cause of those who do try, of the public and of posterity.

My Lords, having said so much in general (and I think I could say no less), it should be my province now to state what has occurred to me for the defence of the pannel against this indictment.

And here, my Lords, we have a most barbarous, indeed a shocking, murder charged against two persons, but with this material distinction between the two, that the one is by the indictment charged as the actual murderer by himself, no mortal along with him at the perpetration of it, and the other is only alleged accessory thereto, as having been in a previous conspiracy with the murderer, and the pannel now to be tried is this conspirator.

My Lords, I do not distinctly see, from the indictment as laid against Breck, what proof there will be of his being the actual murderer. I should at present imagine, from the way in which the story is told, that there can be no proof, at least no direct, no satisfying, proof. But, be that as it will, one thing I am sure of, from the nature of the thing, it is impossible there can be any direct proof of a conspiracy to which only the two persons accused were privy; and therefore it is, we see,

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my Lord Advocate has very properly and, I think, very candidly, **Mr. Macintosh** as I said before, specified his charge of accession against the pannel into these circumstances, from which his Lordship infers the accession or conspiracy. And it is upon the relevancy, or import of these circumstances, that I fall to speak to your Lordships. For it is not to be imagined that, by disputing the relevancy of the indictment, we mean to call in question that murder is a crime, and, for my own part, I as little contest that, as the law now stands, the charge against the pannel in the general proposition of the libel is relevant, that he is guilty, actor, art and part of the murder of Glenure. And I do further admit that, if the pannel has been accessory to, or the former or contriver of, a conspiracy for perpetrating this horrid murder, he is truly as much art and part thereof as the actual murderer; nay, were that the case, I should not hesitate to pronounce him, if possible, a greater criminal than the miscreant by whose hands he accomplished the wicked assassination. But it is my business now to endeavour to show that the circumstances condescended upon in the libel, and on which I must suppose the proof is to rest, are not tantamount to the general charge; or, in other words, that the premises of the indictment, supposing them true, do not infer the conclusion, much less will they support it, when they appear in that light which I hope the proof will place them in, divested of the romantic dress of exaggeration in which fancy has dressed them. And when I attempt this, I own, my Lords, it is not with the design to influence your Lordships' interlocutor, for, as I have already admitted the general proposition of the libel to be a relevant charge, I suppose the interlocutor of the Court will be confined to that. It was the custom not many years ago for the Court to pronounce special interlocutors upon such indictments as the one now under consideration, finding what facts or circumstances, if proven, would infer the charge; but your Lordships' later, and, I think, better, practice has been to evade that, as what (if it had any effect to influence the judgment of the jury) did so far deprive the pannel of his rightful privilege to be tried by the jury and not by the Court; or, as what indeed was more likely to happen, being a thing that had no effect at all, as the jury would judge over again for themselves what the Court had ineptly judged of for them. I say, therefore, my Lords, I do not speak so much for your Lordships as for the jury, willing, so far as I can, to guide their attention to where I apprehend it ought chiefly to be fixed in the proof they are to hear, and to help them, if I can, to judge on what part of it they ought to lay stress in forming an opinion of this cause.

There is only one thing which I must submit to your Lordships, and which I shall but mention, as my brother who

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Mr. Macintosh opened the defence has already offered it, and your Lordships may hear more of it in the reply to my Lord Advocate, and that is, the prejudicial question, how far the pannel, charged with an accession to the crime of another, can be tried for it till the principal is first discussed. Your Lordships well know that an accessory does of its own nature follow a principal; till, then, there be a principal there can be no accessory; and the principal being removed, the accessory is also taken away, and therefore, until the one is convicted, there is no room for trying the other, in like manner as the principal being acquitted the accomplices cannot be condemned. That the law stood formerly so is most certain, as appears from many authorities which I forbear citing. How far this is altered by the Act of Parliament introducing the law of "art and part" will be subject to the judgment of the Court, where I leave it. But I must, at least, inform the jury that, however the law stands in this matter, it is undoubtedly certain that they, or any jury, cannot convict an accessory, but upon this supposition, that if the principal were under trial before them they would convict him: *quando proceditur contra aliquem tanquam quod prastiterit auxilium, debet constare principalem deliquisse*. And the gentlemen of the jury will take heed to this, that if they shall find cause to convict the pannel upon the evidence that shall be brought before them, they do, in the most express manner, declare their opinion that Breck, and no other, was the murderer of Glenure. Nor must they hold sufficient for this purpose the presumptive conviction which arises from his flying justice, and being fugitive and outlawed by the sentence we heard this day pronounced. The law says expressly that no fugitation of a principal is to be held for a conviction against an accessory; and, indeed, why should it? for the confession of the principal, were he now here, would not be evidence against the pannel, and much less must his absence or runaway have that effect. So that the jury must here consider that, before they can convict the pannel, they must have such evidence against Breck as would condemn him were he on trial. And so, leaving Mr. Breck until we see what proof comes out against him, the question is at present—upon what is the charge of the pannel's guilt founded? or are the circumstances alleged in the indictment sufficient to support the accusation of "art and part" against the pannel?

And here, my Lords, I do not propose to entertain your Lordships with a nice disquisition on the law of "art and part"; suffer me only in three words to mention that, so far as I can comprehend, by the law of Scotland "art and part" is inferred from circumstances antecedent to, concomitant with, or subsequent upon the actual commission of a crime. Now, my Lords, when I look to the indictment before me I am able only to

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perceive two facts condescended upon, from which the pannel's accession to this murder is to be inferred: the clothes alleged to be furnished by the pannel to Breck before the murder as a disguise to commit it in, and the money sent him after the action to enable him to go off the country. These, I say, my Lords, are, so far as appears to me, the only two considerable circumstances to infer accession, for your Lordships will observe there is an absolute blank as to the principal period in which guilt ought to appear, the actual commission of the crime; at least, so far as I can gather, there is not one concomitant circumstance alleged against the pannel which connects with the actual murder. And as for the circumstance of the pannel's sending the money to a certain place, where, as would appear from the indictment, he had no access to know that Breck was, as to that I say, and some other ones of lesser moment which I shall likewise take notice of, I take them to be designed as a key to explain into a connection with the murder the two facts already mentioned by showing a previous knowledge of the murder, which the facts themselves do not import, and yet without which they have no weight. Upon these two cardinal facts, then, attempted to be supported by the other lesser circumstances, in my apprehension, lies the burden of the prosecutors' charge. And I will beg leave to say a few words to each of them.

But, before particulars, give me leave, my Lords, as shortly as I can, to make an observation or two upon the nature of proof in general.

And, my Lords, I think it is a common, but a well-founded, maxim, derived from better authority than mine, that in proportion to the greatness of a crime ought the strength of the proof of it to be. The higher a crime is, and the deeper it draws in its consequences, so much the clearer and stronger ought the evidence of it to be, and, indeed, justly; for, I hope, bad as men are, corrupted as human nature is, it is not come that length that vice is natural to mankind. I rather persuade myself that it costs some pains, by rooted habits, to extinguish the sparks of reason, which are the seeds of virtue. Here, then, my Lords, is a crime of so enormous a size that it is almost too big to believe—murder, deliberate murder, assassination in face of the sun, in defiance of all law and government. What proof should then be expected of so monstrous an offence—that one should sit down deliberately and coolly to form a conspiracy of bereaving another of his life in so horrid and barbarous a manner? What degree of flagitiosity must not be proved to suppose one capable of it? Sure, though many circumstances be brought to establish a presumption of guilt, yet to believe it is no easy matter. Must it then depend upon guesswork? Is it to be tried upon questionable evidence? Or is a jury to be

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Mr. Macintosh persuaded into it by art? No; there must be the most palpable and incontestable proof; and, unless the evidence is full and plain, no credit, I will venture to say, can be given to so black, so detestable, and so unnatural a charge. It would almost require to see the blood of the innocent reeking on the hands of the guilty. But what have we here? Presumptions built upon presumptions; suspicions, and these suspicions supported by others; suspicions without proof—nay, disproved. We have first to get over the belly of a good fair character, which this pannel had the happiness to possess, a blameless moral life in private. And should he, all at once, have deviated so far from the paths of virtue, could he so suddenly shake off a regard to all that is sacred? I should have expected to have heard urged against this pannel the abandoned dissoluteness of his manners, the barbarity of his nature, that his life was one continued course of wickedness—in short, every part of his character devoted to murder, that he was one inured to the practice of it, and distinguished by the most consummated guilt; yet not one of these circumstances is so much as alleged in all this aggravated charge; and for a good reason, namely, that the contrary is well known to be true by the prosecutors themselves. Next, my Lords, when we seek for a cause of such a malice as could produce this crime, we find a cause that never subsisted, a cause noways adequate to the effect. Resentment—for what? For accepting an office which somebody must have got, and none could have made a more favourable use of for the friends of the pannel than this gentleman did (for which reason they will be proved to have been in good friendship long after that): resentment for turning out some tenants from an estate forfeit to the Crown, irrecoverably lost to the family with which the pannel was connected! This is the foundation; and what is the superstructure? Of a piece with it, truly. Why, the murderer had on a coat of the pannel's when he committed the brutal action, and got money from him after it. Here is the proof—a circumstantiate proof it is called.

My Lords, I have no objection to circumstantiate proof—what the law calls argumentative evidence. I do admit that it is a legal and proper sort of evidence, as much as direct proof by witnesses. Everything is legal evidence that is such real and certain proof as ought, in natural justice and equity, to be received: for what is evidence of a fact but such testimony as the nature of the case requires to induce a moral certainty of the thing testified: and an argument is nothing else than what gives faith or credit to a thing in itself doubtful, which perfectly agrees with the law definition of proof or proving, which is *fidem facere*. I will admit, further, that circumstantiate evidence, when clear, is perhaps the most satisfying and convincing proof of any. Circumstances are inflexible proofs:

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they will not bend to the inclination of parties: witnesses may be mistaken, may be corrupted: things can be neither, and therefore, so far as they go, deserve unlimited, unreserved faith.

But, then, my Lords, the circumstances must be clear, certain, and well connected; no blank in the chain, else all goes for nothing; the arguments must be perspicuous, nervous, and conclusive. The same law that has said *crimina posse probari, vel testibus, vel documentis aut indicis*, as it requires *idonei testes*, so does it *documenta apertissima, indicia indubitata, luce meridiana clariora*. We must therefore, my Lords, carefully distinguish between circumstantiate or argumentative evidence and bare presumption or even probability; much more suspicion and conjecture, with all which it has a near affinity, and is therefore apt to be confounded with them, for they all depend on facts or circumstances. But, says our great criminal lawyer, Sir George Mackenzie, crimes cannot be proved by presumptions, for presumptions are only founded on verisimilitude, and what may [seem to] be may not be, whereas all probations, especially in criminals, should be infallible and certain; *conclusio semper debet sequi debiliorem partem*; if otherwise, says he, judges (or juries now) would be arbitrary. Probabilities, again, says a good reasoner, twenty of them allowed to be such, are not equal to one matter of fact well attested; they may strengthen the fact, but cannot supply it; they cannot be evidence themselves, because one probability may be set against another, and so mutually destroy the force of each other; and as for suspicions and conjectures, who will pretend to indulge them where life and fortune are concerned?

Guarding, then, my Lords, against these things which are ready to mislead, let us, and let the jury, my Lords, examine cautiously and candidly the circumstances I mentioned, on which the burden of the indictment lies; let us see if they approach a proof; if they do not more participate of the nature, hardly of presumption, not at all probability—rather suspicion and conjecture; or, if they amount to a solid and substantial circumstantiate or argumentative evidence.

My Lords, I mentioned first the clothes; and permit me, my Lords, once more in general to observe upon this circumstance, as well as the others that follow, that I do, with great submission, apprehend they derive their whole weight from a belief of the pannel's guilt, which it is indeed very natural to entertain from such circumstances as he now appears in. The indictment sets out with laying down this crime in the most ugly colours, as, indeed, it justly does deserve, and then subsumes that the pannel is guilty of it, and I venture to say that (take away the influence which too easy a credit to this first position gives to what comes after) all the circumstances brought to support the charge will, in a great measure, lose their force; so that the

## James Stewart.

**Mr. Macintosh** assertion of the charge is the very thing which supports the circumstances adduced to prove it, than which nothing can be a more false circle of probation. Prejudice, my Lords, is like a jaundiced eye or a magnifying glass. To the first everything it looks at appears yellow; and the last to appearance increases the bulk of every object to which it is applied. Just so, prejudice discolours every circumstance, turns the most trivial into something of importance, and makes what is in itself indifferent a proof of guilt. Can the truth of this appear more verified in any than it is in the present case?

My Lords, I will not repeat the true fact, as your Lordships have already heard it opened, with respect to the clothes; had it been that Breck had really received them from the pannel, sure that of itself would not have proved the pannel's accession to a murder committed by Breck at the distance of so many days. But has it any weight at all, this circumstance, as it has been told your Lordships, and as it will be proved to have in fact happened? A man comes to my house, and, without my knowledge, puts on, and goes away with, my clothes, and, when wearing these, a murder falls in his hand, must I be accessory to this murder, or must I be presumed accessory to it? Breck your Lordships hear, was in use of changing his dress; he had been six weeks at one time in Rannoch with these very clothes, and because he has them upon him again at the unlucky period, must the pannel, for that, be guilty with him? My Lords, we have heard of villains borrowing, stealing clothes, assuming characters, feigning voices, and such like things, when about to commit crimes, of purpose to deceive and to throw the suspicion of guilt off from themselves upon the innocent. But surely these are dangerous circumstances, and would need to be supported by better proof before the life of any man was taken away upon them, or, indeed, what man is safe? It will not avail that we keep ourselves safe, so long as it is in the power of others thus to bring us into danger. Every man must so be at the mercy of others, and those of the vilest of mankind. The libel indeed says the pannel furnished Breck with his clothes, but how is that to be proved? Did the pannel give him them? No, my Lords; we shall prove he took them, and went with them from the pannel's house when he was not there, when he knew nothing of it. But though he had known, as he did on former occasions, or though he had with his own hands given them to Breck, would it have been proof against the pannel? I cannot imagine it. I might admit that had Breck never before changed his dress at the pannel's house, had this been the first time, it might have been a circumstance, and but a weak one too, from which to presume guilt against the pannel; but when he had been in use of doing it, does there from thence arise so much as a distant suspicion against the pannel? Whatever

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effect it may have against Breck to presume that wicked design, which I shall at present take for granted he soon thereafter executed (to presume it, I say, against him), that he changed at so critical a juncture his dress, yet sure it can have no influence against the pannel, who, till it is better proved, cannot be supposed privy to so horrid an undertaking in Breck. And this, my Lords, puts me in mind to make a distinction which I should have made sooner—that is, betwixt Breck and the pannel. And I must call upon the jury carefully to separate the parts of this indictment which refer to the one and to the other, for, when they are confounded together, one, in reading or hearing it, is extremely apt equally to apply the effect of all the circumstances to both. The indictment has so chequered them through each other that it costs some pains to distinguish them, and lay to the door of Breck and of the pannel what separately applies to each, and seems to support the different charges against them. To show the necessity of this, I will but mention one paragraph of the libel where this confusion manifestly prevails. It is at the foot of the third and top of the fourth pages of the indictment. It is there first said that Breck “having come to the pannel’s house on the Monday evening, James Stewart, the pannel, was informed by him” (Breck) “or by his son, Charles Stewart, or by Fasnacloich’s daughter, of Glenure’s motions and resolutions.” And then it immediately follows, “And there, after receiving *such* advice, in the evening of the same day, the said Allan Breck Stewart laid aside his own clothes,” &c.

So your Lordships see that, first, Breck is said to inform the pannel—and then Breck’s receiving such advice or information from the pannel (just inverting the thing) is laid down as the spring of Breck’s actions, with a design, as is plain, to extract guilt against the pannel, from his giving information to Breck, which produced his action, when it was truly Breck himself that informed the pannel, as the indictment first asserts. This, my Lords, may be an inaccuracy in wording the indictment, but it is not for that I observe it; I mention it that the jury may see how carefully they must consider and weigh every branch of this complex charge, as being heedless to one branch or circumstance may have bad effect. And surely it is evident in this particular that the weight of the circumstance as laid against the pannel wholly flies off by a just attention to the erroneous connection of the fact as narrated.

There is another circumstance of the indictment which, though it does not fall so directly within my present view, I cannot omit taking notice of, as it comes across my thought; it is as to the pannel’s behaviour when the murder of Glenure was first notified to him by Glenure’s servant. On page seven of the indictment, it is said, the pannel appeared noways surprised

## James Stewart.

Mr. Macintosh or concerned. Alas, my Lords, what such proof of guilt is this? We have seen doubtful actions by the help of innuendoes construed criminally; but to give that in evidence which was neither said nor done, to construe silence into guilt, is entirely new, and the author of this invention will deserve the glory of the discovery. This is, indeed, to conjure one into a crime. My Lords, I could venture to invert the proposition, if the gentlemen please, and maintain that a contrary behaviour to any remarkable degree would have been more suspicious; *tremor est signum cordis*, or, in the words of the proverb of our own country, "The greatest thief cries first 'Fie!'" But, my Lords, the fact is different from what is in the libel. It will be proved to your Lordships and the jury that the pannel, upon receiving this piece of, I must call it, melancholy news, expressed to the messenger a decent concern and regret, though little did he think at that time that his behaviour then would now be brought into judgment against him.

Of the same kind with this, my Lords, is another circumstance which I remember in the indictment (for I cannot go through them all), and that is a letter of the pannel's to one Charles Stewart, relating to the price of milk cows. I confess, my Lords, it is to me mysterious yet what import this letter is of as proof against the pannel. If it is that the subject of it is suspected to be fictitious, that we shall be able to prove real. But what connection has it with the charge? I own I cannot find it out. It would appear to me that this letter must suffer torture, and not a little of it, before anything can be squeezed out of it against the pannel. It puts me in mind of a saying, that a great but very wicked politician, Cardinal Mazarin, is said to have boasted that, if he had but two lines of a man's writing, with a few circumstances attested by witnesses, he would cut off any man's head when he pleased. Thank God we breathe in a climate different from the one that pontiff ruled in, and I hope we do not delight in blood so much as to adopt his cruel scheme.

These things, my Lords, I have thrown out by the way; but as to what I was upon—the circumstance of the clothes—I shall only add that, as it is in truth, it appears of no weight at all, and, had it been as in the indictment, I should have thought it a circumstance greatly too thin and slender to build anything upon.

There only then remains the other circumstance of the money, which is posterior to the murder. For, as I have already had occasion to observe, I do not discover a concomitant circumstance alleged, unless the arms be pointed at for this purpose; as I observe, there are two guns mentioned in the list of evidence as found concealed near the pannel's house, and which possibly the prosecutors will attempt to prove to have been those which the indictment says Breck had brought, or caused to be

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brought, to the place of the murder. Were anything of this to be proved, I shall fairly admit it would be a strong circumstance, as it is one of these very things which the law points out; *Opem ferunt qui, cum crimini patrato non interfuerint, ferramenta tamen, tela, venena commodaverit, sciens cujus rei causa commodaret.* But I cannot see where the proof of anything like this can arise. It does not appear that any guns were found at the place of murder. I think it is presumable that the murderer would carry his arms with him, after using them to his wicked purpose. And as for these found concealed near the pannel's house, we are instructed to say they were in the pannel's house at the time of the murder, and were hid after it, for fear of an apprehended search for arms by the military that was expected to come into the country.

This, therefore, I leave upon the proof, and shall now, in a word or two, take notice of the money sent by the pannel to Breck after the murder. And here, my Lords, I must be allowed to observe in the first place, what Sir George Mackenzie's doctrine upon this point is. His words are, sec. 7 (tit. Art and Part), "assistance given after the crime committed scarce deserves the name of assistance," and cites an authority for this opinion. I will admit, my Lords, that, if this pannel did, knowing Breck to be the murderer of Glenure, administer help to his escape, by furnishing him with money, he did a very wrong thing, perhaps was guilty of an offence which the law would punish. But it is an offence quite different from that of accession to the murder. It is a species of crime by itself; and, as my Lord Advocate has not laid his prosecution for that, we have nothing to do with it. At the same time, my Lords, however wrong such a conduct might have been, yet it could admit of an excuse. Your Lordships have heard that this Breck was the pannel's relation. He had been his pupil, brought up in his family, till he went into the King's service as a soldier; and we all know, my Lords, the strength of compassion on such occasions, especially to our friends; it would perhaps be hard to punish for it. The worthlessness of our relations does not at once dissolve the ties of nature; none of us can be sure but we may have a wicked son or a brother, and, in a case of this sort, it would be natural to wish to help him out of the way; perhaps it would be wrong, but such is the known force of natural ties, and it at least lessens the crime. However, here, my Lords, the case does not apply, for we absolutely deny that the pannel knew anything of Breck's guilt, and such knowledge can never be presumed; he knew the situation he was in as a deserter, and the hazard of it, when the military were coming into the country to make a search; and, to be sure, had he been caught by the military they would have saved your Lordships the trouble of trying him, supposing him to be

Mr. Macintosh

## James Stewart.

Mr. Macintosh guilty; a court-martial would have made short work with him, unless it had been (as likely it might) thought more for the end of public justice to make him suffer for so flagrant an offence as this, than to hang him as a deserter. It was for this reason, my Lords, and not from any knowledge of his guilt, that the pannel, upon Breck's message to that purpose, as your Lordships have heard, sent him the money to enable him to get off the country, and go where his business called him—his business I say, my Lords, but at the same time I call it his illegal, his unnatural business, as an enemy to his country and a traitor to his King. And as to the circumstance which I formerly noticed as tending to point out the pannel's previous knowledge of Breck's motions by his knowing where to send the money, though he had no access to see Breck after the murder; as to this I say, my Lords, your Lordships see no stress can be laid upon it when you have heard that it was by a message from Breck that the pannel learned his motions; so that still something is desiderate here whereon to fix that circumstance, upon which alone depends the pannel's accession, to wit, his foreknowledge of the murder.

My Lords, I have finished what occurred to me on the circumstances of the indictment, and I am unwilling to weary your Lordships.

I forbear entering upon the bouman's conversation with Breck; that is but one man's story of what another said. It is but hearing a hearsay, or rather less; and I know no law, no rule, it rather seems contrary to all rules of evidence, that one should suffer for what another said of him, and *that* the very guilty person as is here supposed. If he did say so, it might be to throw the suspicion off himself with the better grace, but, be it as it will, it can be no evidence against the pannel.

There is but one other thing in the indictment which we have to finish regarding this doubtful evidence, if it can be called so much, and that is the threatenings; but as they are libelled in general I cannot argue upon them, nor has the pannel any opportunity to disprove them; they must therefore be left till the evidence is concluded.

My Lords, I have said what I could from such helps as were in my way upon the nature and import of this sort of evidence which is now before us. I shall only say further on it that this sort of evidence, when imprudently handled, may be resembled to the monstrous machine for making havoc of enemies, which, when invented by a subject, was wisely snothered in the birth by the governor, lest, however convenient it might be when used for him, he might come one day to regret the invention when he found it applied against himself. And as to this particular case, I take it that every individual circumstance, as laid in the indictment, so far as

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we know of it, will be unsupported with evidence; that all Mr. Macintosh put together do not amount to the charge. I think there are no grounds for any private opinion of the pannel's guilt but what arises from prejudice only. I think prejudice, or even opinion, has nothing to do with judicial proceedings. It is the judgment that must acquit or condemn, and that must, can only be founded on evidence, on proof, not on suspicion or presumption.

I shall now take the liberty to read to your Lordships and the jury the words of a great writer on the common criminal law when treating of the subject of argumentative evidence—*Math. de Crim. ad Tit. 15 cap. 6.* He is speaking of arguments, and says, "*Argumentum est necessarium, cujus consequentia est necessaria, veluti coivisse eam que peperit; contingens cujus consequentia est probabilis veluti eadem fuisse qui cruentatus est.*" Then he adds, "*Contingentia argumenta, quamvis singula fdem non faciunt, plura tamen conjuncta crimen manifestare possunt. Hæc appellantur præsumptiones; præsumptio enim nihil aliud est, quam argumentum verisimile communi sensu perceptum, ex eo quod plerumque fit aut fieri intelligitur.*" And he gives the following example of an argumentative evidence which may condemn which I beg the jury will attend to, "*Occisus est kallendis Marius; Titius perempti inimicus fuit eidem sæpius non solum interminatus sed & insidiatus est; cum deprehenderetur iisdem kallendis in loco cædis cruentatus cum gladio cruento, ad mensuram vulneris facto, toto vultu expalluit, interrogatus, nil respondit, trepide fugit. Hic singula (says our author) quidem argumenta infirmiora sunt universa, tamen cædis auctorem Titium evidenter designant.*" And I most heartily agree with the doctrine, and shall leave it to the jury to judge how far the proof brought against the pannel comes up to this standard.

I shall conclude with laying before the jury the words of a great judge and lawyer of our own country on an occasion somewhat similar to this. It is part of my Lord Coupar's speech upon the Bishop of Rochester's trial, where the evidence depended on circumstances, as it does here. His Lordship says, "The wisdom and goodness of our law appears in nothing more remarkably than in the perspicuity, certainty, and clearness of the evidence it requires to fix a crime upon any man whereby his life, his liberty, or his property can be concerned; herein we glory and pride ourselves, and are justly the envy of all our neighbour nations. Our law in such cases requires evidence so clear and convincing that every bystander, the instant he hears it, must be fully satisfied of the truth (and certainty) of it. It admits of no surmises, innuendoes, forced consequences, or harsh constructions, nor anything else to be offered as evidence, but what is real and substantial, according to the rules of natural justice and equity."

## James Stewart.

**Mr. Mansfield** These are my Lord Coupar's words as we have them given us. It is very true the judgment of the House of Lords went against his Lordship's opinion in that question, but I must presume that the judgment of that august assembly, though against his opinion, proceeded upon the principles established by himself, and though it had been otherwise, the argument would still be good, as reasoning is not always bad when it fails in success. I think I may with great propriety adopt what that same noble Lord further said on that occasion, as follows:—"In the case before you the whole charge is built upon circumstances, and these are said to be supported by other circumstances, but all of them are so remote, so general, and I may say, so inoffensive, that they might suit any Lord here." I think the circumstances charged against the pannel might suit any one here.

My Lords, I beg pardon for saying so much. I hope your Lordships will excuse me for the reasons I gave in the entry. I shall only further add "that the pannel is now on trial for his life; he asserts his own innocence; he pleads "not guilty" to the charge. I hope it is the answer of every one present; God give him a good deliverance. And if he falls let it be as a sacrifice to justice, to expiate guilt, and purge the land of blood, not as a victim to the blind fury of his enemies, or the rage of the deceased's friends, to appease popular prejudices, or ill-founded clamour and outcry.

**Mr. Fraser**

**Mr. Simon Fraser**, against the pannel—My Lord Justice-General, I appear as counsel for Mrs. Campbell of Glenure and her infant children against James Stewart, now in the pannel, accused as guilty, actor, art and part of the murder of Colin Campbell of Glenure, a murder aggravated by its being committed from a malicious hatred and resentment conceived against Mr. Campbell on account of the faithful discharge of his duty in an office entrusted to him by His Majesty.

This crime, my Lord, is in itself so horrid, and in the present instance is attended with aggravating circumstances of such an extraordinary nature, as must rouse the indignation of every worthy member of society and call loudly for the most severe and exemplary punishment. Murder has always been looked upon as one of the most heinous crimes, but in all civilised countries, at all times, that base, that treacherous species of murder, assassination, has been held in still greater, as more deserved, abhorrence. What, then, must be the degree of that man's guilt who deliberately, unprovoked, in cold blood, during times of full peace, and in the most contemptuous despite of Government, commits this most treacherous and most abhorred of all murders! Heavy as that load of guilt is, I am sorry to say, my Lord, it lies with its utmost weight upon the prisoner now before you, which renders this trial of great

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importance to every individual, but of still greater to this **Mr. Fraser** country in general. If assassins capable, my Lord, of lying in wait with premeditated malice, with malice concealed in their hearts, for hours, for days, if such are suffered to go unpunished, who of us all is safe, what individual, however innocent, however brave, however particularly entitled to the public protection? But what, I hope, my Lord, we all hold of greater importance than the safety of individuals, the interest, the honour, of this country is very nearly concerned, not to suffer the most daring and bare-faced insult to be offered to His Majesty's authority and Government, and offered at a time when we, in common with His Majesty's other subjects, are reaping the fruits of his most benign reign. I say, my Lord, our interest, our honour, is concerned, not to suffer this, without endeavouring to wipe off the stain from the country, to show the King and to show the world that this is the bloody deed of one or two wicked and desperate men, a deed which the country abhors, and which it will not suffer to go unpunished.

The gentleman who opened the defence, my Lord, has been as good as his word, and has given, indeed, a plausible account of this affair, which makes me think it necessary to lay before the Court, as distinctly and as concisely as I can, that state of the facts which there is the greatest reason to believe the proof will establish. And in doing so I hope to give your Lordships a more just view of this extraordinary case, and at the same time to be of some use in leading the gentlemen of the jury to those parts of the proof which deserve most their attention.

The pannel, James Stewart, my Lord, is natural brother to Mr. Stewart of Ardshiel, who commanded the men of that name who were engaged in the late rebellion, and by means of that, he acquired their affections and attachment. When Ardshiel was obliged to leave the country his brother (the pannel) set himself at the head of the family interest, and it not appearing in that part of the world a forced transition, he was allowed to take this authority upon him. In a short time, therefore, he came to be a leading man and to have the chief influence over the common people. Such, my Lord, was the state of that corner of the country in the year 1749, when Mr. Campbell of Glenure was appointed factor for His Majesty upon the estate of Ardshiel and some other forfeited estates in that neighbourhood. James Stewart soon foresaw how much this factory must interfere with the plan which he had laid, and with the interest which he wanted to establish. Glenure, therefore, very early became the object of his ill-will. But it did not long rest there, for, in the year 1751, Glenure having, in consequence of orders from the Barons of Exchequer, caused Mr. Stewart to be removed from the farm which he possessed upon the Ardshiel estate, what was before but ill-will, was now

## James Stewart.

**Mr. Fraser** turned into hatred and resentment. This led him to oppose all Glenure's measures, and particularly to play the volunteer in the service of some other tenants upon the same estate whom Glenure was about to remove at the ensuing term. For this purpose he repaired in person to Edinburgh, and in name of those tenants, though without the smallest commission or authority from them, made be presented to the Lords of Session a Bill of Suspension of the intended removal, and obtained a Sist of Execution. This Sist he prevailed upon the tenants to intimate to Glenure, who was put to the trouble and expense of a journey to Edinburgh before he could have the groundless Bill of Suspension answered, which was, indeed, all that was necessary in order to make it be refused.

**Mr. Stewart**, my Lord, little satisfied with this unsuccessful attempt, which confirmed Glenure's influence at the expense of his own, and, finding himself forced to quit the country and to abandon his favourite plan of popularity, formed a most desperate scheme of revenge, no less than a plot to take away the life of Glenure in the basest manner. In pursuance of this scheme he was at pains over all the country to represent Glenure's conduct in the most disadvantageous light, and when he thought there was a general odium raised, he had recourse, in a more particular manner, to those in whom he could most certainly confide, to those who were most easy to be stirred up and most inclined to any desperate deed. Different sets of such men, my Lord, he assembled at different times, and after expatiating against Glenure's ill-conduct, he used all his art to convince them that it was their duty to free the country of what he was pleased to call Glenure's oppression, telling them that he had once seen commoners in Appin who would long ere then have stopped his career, and that he could assure any of them, who was hardy enough to undertake it, a certain escape to France and a handsome pension afterwards. By those methods, my Lord, **Mr. Stewart** used his utmost endeavours to stir up some hot-headed ruffian to the execution of his plot, but his endeavours were long used in vain, till at length **Allan Breck Stewart** was thrown in his way, a man marked out for such a purpose, a deserter from our service to that of the French, one who, in both countries, was a man of desperate fortune, but who in this had not only lost all title to the protection of the law, but was become obnoxious to its severest penalties. This man, **James Stewart** immediately laid hold of and cherished. It was easy to stir him up to resentment. To him, therefore, he communicated the whole of his design, and with him he concerted the execution of it. **Allan** had nothing to lose, therefore it was determined he should be the actor, whilst **James** should lie by to protect him, and to turn the mischief as much as possible to his own advantage.

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Happily, my Lord, keenness and resentment, as usual in crimes, **Mr. Fraser** got here the better of caution, not only with Allan, but even with the more sagacious James, for in the midst of their most cunning contrivances they could not refrain from uttering such strong and particular threats against Glenure as immediately pointed them out for the objects of general suspicion. Both of them have many times threatened him with death, and both of them have even gone beyond general terms, for Allan declared he would on the first occasion shoot him as he would a blackcock, an expression very applicable to the base manner which he afterwards made use of, and James, still more inveterate, swore, in the fulness of his heart, that he would shoot Glenure, even if he himself was so disabled as to be obliged to go upon his knees to a window in order to do it. These are instances of the threats which they made use of, which first pointed them out, and which must still go a great way in convincing every thinking man, that they, and they only, were his murderers.

In consequence of their last resolution, that Allan should act whilst James stood at the helm, Allan laid himself out to get particular information of Glenure's motions, and for that purpose he contrived to make a visit to Fasnacloich, the very next house to Glenure, and within a mile of it. There he remained upon the look-out till Monday, the 11th, when Glenure set out from his own house for Fort-William. Upon which Allan immediately repaired to his associate James to communicate the intelligence he had got, namely, that Glenure was gone to Lochaber, that he was resolved to persist in removing the tenants of Ardsheel, and was certainly to return for that purpose before the term day, the 15th. Having upon this information consulted together and settled the plan of operations, the pannel furnished his friend with a dress more proper for what he was going about, giving him a suit of his own clothes, a black short coat, trousers, and a blue bonnet, and, thus equipped, he set out the next morning, Tuesday, the 12th; but knowing that Glenure might possibly not return for a day or two, in order to avoid suspicion he made a tour among his relations, going first to Ballachelish, from thence to Glenco, from thence to Callart, where he stayed Tuesday night, and on Wednesday, the 13th, he went back by the same route to Ballachelish, in all which circuit he was at hand to lay wait for Glenure at whatever time he should return from Lochaber. On Thursday, the 14th, when there was a moral certainty that Glenure would return (he having appointed a meeting with several gentlemen in the country of Appin that evening), Allan left Ballachelish's house under the pretence of fishing, and very soon after appeared at the ferry of Ballachelish, by which Glenure must necessarily pass on his way from Lochaber to

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**Mr. Fraser Appin.** There he met the ferryman, and, hastily calling him aside, inquired, with more than ordinary earnestness and anxiety, if Glenure had passed there that day, and being answered that he had not, Allan immediately ran up the hill towards the high grounds above the house, from whence he had a view of the country around on both sides of the loch, and a short passage into the wood of Lettermore. In this wood, my Lord, it was that he marked out a most proper station for the execution of his desperate design, a little thicket on a rising ground within a few paces of the highway along which every traveller must necessarily pass, from whence, himself unseen, he could distinctly see the road leading to the ferry of Ballachelish on the Lochaber side, and the road on the Appin side, leading from thence to the wood of Lettermore. Here, my Lord, he posted himself with one or two loaded guns provided for the purpose, and here he lay in wait till Mr. Campbell of Glenure had passed the ferry and was riding along the road through the wood. It was then, my Lord, that Allan Breck Stewart seized this long-wished-for opportunity, and when Glenure was come within convenient distance this abandoned assassin shot him dead with two balls from behind, a deed as cowardly as it was barbarous and inhuman; a deed of which there is hardly an example in this part of the kingdom, whose inhabitants, however rash they may be to brave dangers in an open manner, have never, till this atrocious crime of their unworthy countryman, been branded with the ignominy of base and cowardly assassination.

Allan, having thus executed his deadly purpose, immediately disappeared in order to betake himself to the concealment provided for him, calling in his way, after a hidden manner and at midnight, at Glencoe's house, where he informed the lady and her son that Glenure was murdered, and, without any more conversation on either side, added, as a consequence of what he supposed known, that he himself was immediately to leave the country. Soon after this he arrived at his allotted retreat, the shealing of Koalisnacoan, the habitation of the trusty bouman, and in a conversation, which he and the bouman had there, he talked of the murder in a more remarkable manner than he had even done to Lady Glencoe, for, after faintly enough denying his own concern in it, he told his friend that he was sure the family of Ardshiel would be suspected, particularly James Stewart and his son Allan, using this remarkable expression, "That there would be no fear of them if their own tongues did not betray them, especially Allan's, who, he feared, was more open-mouthed than his father."

All this while, my Lord, the pannel remained at home undisturbed, and when the accounts came of Glenure's murder, and everybody else in the neighbourhood was hastening to go to

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look after the corpse, he never offered to stir, nay, he would **Mr. Fraser** not suffer any one of his family to go near it. He, my Lord, had other things to mind. Not the unhappy murdered, but the barbarous murderer, was the object of his attention. His own preservation was so closely linked with Allan Breck's that there was a necessity for Allan's being kept out of the way at any rate. James therefore immediately despatched Alexander Stewart, packman, his relation, and a person in whom he had entire confidence, to Fort-William with a most pressing demand, as he himself acknowledges, for money to supply his friend Allan, and to enable him to make his escape from justice; and when the packman returned with a less sum than was expected, James, in the most critical juncture of his own affairs, added two-thirds of the money which he had for his own support to the sum brought from Fort-William, and sent away the faithful packman with this money and his French clothes to Allan Breck, giving particular directions with regard to the place of his concealment, a circumstance no one can well be supposed to have known who was not in the secret, who was not originally present to the crime for which he was obliged to have recourse to that concealment.

These, my Lords, are the facts which, I have reason to believe, will soon be proved to your Lordships. The gentleman has been pleased to express his surprise that, after so strict an inquiry, this should be all that is made to appear, and to say that these facts are trivial and not relevant to infer the crime. But I cannot think any impartial man who has read the indictment now in my hand will join in the gentleman's surprise; on the contrary, I believe every such person must join with me in thinking no small praise due to the very proper encouragement and assistance of the Crown and to the very uncommon diligence and activity of the private prosecutors, which, together, have been able to throw so much light upon so dark a scene. Your Lordship has been told that the facts mentioned are not sufficient to infer the crime libelled. I need hardly observe, my Lord, that such crimes are particularly villainous and destructive from the hidden and concealed manner in which they are committed, which allows of no defence, and too often screens from punishment. Their very nature does not admit of such a proof as may be expected in other cases; a proof by circumstances is all that can be looked for; indeed, when that is conclusive, it is, of all others, the most convincing. Witnesses may be partial, they may be perjured, but a closely connected chain of circumstances is liable to none of those objections. Now, my Lord, I humbly apprehend no chain of circumstances can be stronger nor more closely connected than that which I have just laid before your Lordship. You see a discontent rationally, nay, probably,

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Mr. Fraser accounted for; the strongest and most particular threats following that discontent; and the commission of the crime as immediately following these threats; the clearest instance of the *malum minatur et damnum secutum*. But it does not rest here. You see, my Lord, the murderer traced from day to day, from hour to hour, from place to place, to the very day, the very hour, almost to the very spot in which the murder was committed, and you see his associate in the strictest connection and intimacy with him, caballing in private, and furnishing him with a proper dress before the murder, and, after it, furnishing him with clothes and money to enable him to fly from justice. And what deserves particular attention, you see his associate minutely acquainted with the place of his concealment, the place previously pointed out for his retreat; and the murderer in that retreat, where he thought himself in safety, expressing his concern for his friend in very remarkable terms, in terms which carry a strong conviction of their guilty conspiracy, but at the same time show the cunning with which they were conscious of having contrived it. I cannot doubt but your Lordship will think this a chain of circumstances more than sufficient to infer the crime libelled. At the same time, I must beg leave to observe that, in such an indictment as this, there was no necessity of mentioning any one circumstance; it would have been sufficient in law, and the gentlemen acknowledge it, to have libelled "art and part" in general terms; that is, that, time and place libelled, the crime was committed, and that the pannel was guilty, art and part, of that crime. Now, if my Lord Advocate, from the humanity of his disposition, from a desire that every offender, however heinous his offence, should have the fairest trial and every opportunity of making his defence; if from these motives he has given a very long and particular indictment, when only a very short and general one was necessary, it is somewhat invidious in the gentlemen of the other side to turn this into an objection to the relevancy. But let them, my Lord; the point is fixed as well by law as by uniform practice, and therefore whilst we contend that the circumstances as particularised in the indictment are fully relevant, we at the same time humbly hope from your Lordship an interlocutor upon the general point of "art and part" independent of these circumstances.

It has been objected to this indictment that an accessory is here brought to trial before the principal is convicted, which is attended with these bad consequences, that proof must be led against the principal in absence, that his greatest enemies may be produced as witnesses, and the proper exculpatory defences may be omitted. And further, your Lordship has been told that this is contrary to the laws of neighbouring

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nations, particularly that of England, and contrary to the law of Scotland, as handed down to us in the books of Reg. Maj. Quon. Attach. stat. Dav. II. and Sir Geo. Macken. There might, my Lord, have been some room for such an objection if no formal notice had been taken of the principal, but I can hardly think any objection will be admitted in the present case, when the principal is indicted, when every legal step is taken by the prosecutors for bringing him to justice, and when the only conviction which our law admits of in such cases is gone against him. The inconveniences which it was said might follow from the present practice are trifling compared to those which must be the necessary consequence, if the laws allowed not an accessory to be tried, whilst the principal, conscious of his own guilt, dared not to appear. It is but finding out some desperate fellow for the execution, who can afterwards be easily kept out of the way, and the most inhuman acts must go unpunished, the most abandoned villains may laugh at justice. The authorities produced in point of law are, no doubt, great, but times and circumstances derogate from the greatest authorities. If what Sir Geo. Mackenzie has given us as his opinion was once law, it is beyond all doubt by later practice no longer held as such, and it signifies as little what is the law of neighbouring nations as what was once our own law, if custom, the justest of all legislators, directed by common sense and equity, has now enacted the contrary.

The hardships, my Lord, which it is pretended the pannel underwent can never be admitted as objections to this indictment. That they may not, however, leave any impression upon the gentlemen of the jury, or even upon this audience, I shall give your Lordship the true account of what are called hardships, and they will no longer appear to be such. That upon which most stress seems to be laid is that the pannel's wife and his children, who, by law, cannot be called as witnesses against him, have been precognosced or judicially examined, and that their declarations are proposed to be produced in this trial. The fact is true; and nothing is more easily accounted for. When this murder was committed all was confusion and ignorance, and every method that could be imagined was found necessary in order to get to the bottom of the deep-laid plot. It was at that time that James Stewart's family, in common with all in that neighbourhood, were called before a judge and examined upon what they knew of Glenure's murder—it was more than probable that some one of that country committed the murder, and that many in that country were in the secret of it—but when these people were examined neither of these acts of guilt was charged upon any particular person. Allan Breck was not then accused of the actual murder, nor James Stewart of being accessory to it. So that his wife and children

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**Mr. Fraser** were really not examined with any view to him; they were examined to discover the truth in general before it was known upon what particular person the accusation would fall. Whether their declarations will be produced in this trial may be a question afterwards, but, in the meanwhile, it appears not contrary to law or equity that they should be produced. It is confounding things to say that this is making the pannel's wife and children witnesses against him. The declarations will not be produced to prove the truth of anything contained in them, of which they would not be legal evidence; they are only to prove that the persons who emitted the declarations averred these things, and if any word of theirs could give cause of suspicion against the pannel it would be surely competent to prove such words by the testimony of third parties. Does it not, then, come altogether to the same purpose to prove them by production of the words themselves judicially committed to writing?

The close confinement of the pannel, as well as that of some others, who were then taken up upon suspicion of guilt, but are now to be produced as witnesses, was owing to the rules of the place where they were confined. His Majesty's garrisons have been used as prisons more for the custody of State prisoners than of common criminals. It is not to be wondered at, then, if military officers, unacquainted with the distinctions of law, applied to the latter the orders which they were in use to receive for the former. As soon as the law was explained it was obeyed; nor is it pretended that the pannel, or any other, was closely confined one hour after the commanding officer was informed that the law forbade it. It is true a new commanding officer came to whom the law was not immediately explained, which occasioned the second close confinement complained of; but he, as well as his predecessor, paid obedience to the law as soon as it was made known to him. That it was not, therefore, made known to both as soon as might have been, the pannel's counsel must account for. That was altogether their business; and the consequence, whatever it be, which may arise from the neglect of it, ought not to fall upon the prosecutors, far less upon the gentlemen of the army, who, the pannel himself acknowledges, have all, in any charge they had of him, done their duty with the utmost humanity, always like soldiers and like men. It is surprising the gentlemen should mention as a hardship their being refused access to the pannel after they came to Inveraray. They must be conscious that this was a hardship of not an hour's duration. They required admittance from the chief magistrate, who, not caring, as the Duke of Argyll was upon the spot, to take any step without His Grace's approbation, sent directly to acquaint him of the demand, and His Grace gave

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immediate orders for their admittance. The gentleman who **Mr. Fraser** spoke first mentioned one thing which, I dare to say, he alone will think a hardship upon the pannel—I mean, my Lord, it having fallen to that gentleman's share to open his defence—and I cannot help thinking the complaint of the pannel's want of able assistance, coming from that side to this, looks like banter, for, setting aside my Lord Advocate, whose office obliges him to assist the prosecutors, I need only beg your Lordship will cast your eye, first to the one side of this table and then to the other, in order to judge where the advantage lies in age and experience.

Upon the whole, my Lord, I cannot doubt but your Lordship will find this libel relevant to infer the most severe pains of law, as the crime libelled is of the most heinous nature, and that you will remit the pannel to the knowledge of an assize, who, I find from the list in my hand, must be men above the imputation of any other prejudice but what every good man must feel against so horrid a crime—a prejudice which, I am sure, they will carefully distinguish, as I hope we all do, from any personal prejudice against the pannel, who has an undoubted right to demand their most impartial attention to the proof by which alone his innocence must stand confessed or his guilt meet with its deserved punishment.

**Mr. JAMES ERSKINE**, against the pannel—My Lords, I have **Mr. Erskine** likewise the honour to be one of the counsel for the prosecutors in this trial, and as such it is my duty to support the charge exhibited in the libel, which has been just now very fully and distinctly opened.

The importance of the trial, the respect I have for the honourable Court and this audience, were alone sufficient to have laid me under great uneasiness, but that uneasiness is greatly increased when I find myself engaged in a task which I am at present but ill-prepared to execute.

Though I early and willingly engaged to take a part in this trial, an unexpected distress, which has for some days dissipated my attention to business, made me hope the prosecutors would have relieved me of an engagement which I was unfit to perform and dispensed with my attendance, which, I apprehended, could not be material to them, but in this I have been disappointed by the indisposition of a gentleman of great abilities and experience which has, unhappily, deprived them of his abler assistance.

For this reason I will beg leave to confine myself entirely to make the proper answers to the arguments which have been urged by the learned gentlemen in defence of the prisoner. I shall forebear to enlarge upon the many aggravating circumstances that appear in the horrid scene just now opened to your Lordships.

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**Mr. Erskine** I will not attempt to inflame the jury by giving loose reins to an imagination warmed by a real regard for the gentleman deceased, compassion for the widow and the fatherless under peculiar circumstances of distress, a high concern for the interest of this country, and the preservation of our present happy constitution, all which appear to have been struck at by the hand that gave this wound.

These considerations cannot fail to kindle indignation in every breast, and I am confident that they have already had the effect to rouse the attention of the Court, and balance a misplaced compassion, not unnatural to humane minds, which sometimes blunts even the sword of justice; but the prosecutors do not expect to obtain a judgment against the prisoner in this Court upon any other foundation than a real conviction of his guilt, arising from evidence, clear, unexceptionable, and agreeable to the laws of this country.

The laws of this country are favourable, particularly favourable, to persons under trial for their life, and the prosecutors are willing to allow the prisoner the full benefit of every advantage that these laws or the practice of the Court can give him a title to.

This being the case, I cannot omit observing how improperly the prisoner has rested the greatest weight of his defence upon clamorous assertions of unfair advantages and unlawful oppression upon the part of the prosecutors.

For, firstly, though they were founded on truth, they would not amount to a defence against the libel—one crime cannot compensate another, nor an injury received from the prosecutor wipe away the guilt of the prisoner.

But, secondly, these are measures so inconsistent with that glorious spirit of liberty that reigns even among the rulers in this age and nation, so inconsistent with the known mildness and clemency of His Majesty's Government and the unfortunate circumstances of the private prosecutors in this trial, that I can hardly persuade myself it would be necessary to make a more particular answer to these complaints.

Nevertheless, as I am sensible that nothing is more inseparable from noble and generous minds than a desire to throw every atom into the balance on the side of the distressed, while there remains a possibility of their innocence, and that a simple suspicion that the prisoner had suffered any unnecessary hardship or been deprived of any means of defending himself, might avail him more in the event of this trial than the best defence in the mouth of the ablest advocate. For that reason I will beg leave in a few words to show the Court what foundation there is for such complaints.

The first was that the prosecutors had deprived him of the benefit of counsel by retaining most of the ablest lawyers at the

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bar. To this I can make no stronger answer than what the Court has just now heard from the very gentlemen who make the complaint, and will be confirmed by these who are to support them. I am confident they will convince the Court, and all who hear them, of the absurdity of such a complaint when urged by four gentlemen of such abilities. Mr. Erskine

In the second place it has been said that the prisoner had been deprived of his liberty and kept in close confinement contrary to law, debarred the conversation of his family and friends, and denied access to speak either to his agents or witnesses; to all which it may be answered in the general that the laws of every well-governed realm certainly allow the confinement of persons charged with capital offences, in such manner as they may be secured, till they can be brought to trial; that no limitation of this rule has been introduced, either by law or practice in Scotland, other than what is contained in that valuable and salutary statute of Parl. I. Sess. 9 of King William, for preventing wrongous imprisonment, no part of which has been infringed in the present case. That the prisoner has been, since he came to this place, strictly confined cannot appear unreasonable or oppressive to those who know that of late, in spite of the vigilance of the magistrates, several criminals have escaped from their jail whose cases were less desperate than his, and who had no formidable tribe of friends or accomplices to assist their escape.

It will not appear surprising or unjust that the magistrates were cautious to give access to any persons, under the colour of their being agents or witnesses, without a proper warrant, when it appears from the proof to be brought in the trial, that, during the prisoner's confinement in the garrison at Fort-William, he found means to tamper with the principal evidences (though also in custody, in order to prevent such undue influence) by emissaries who carried repeated messages in his name. This, I think, might likewise appear to be a good reason for the officer commanding at Fort-William to be particularly careful to interrupt and prevent these practices, by denying access to the persons by whose means they were known to be carried on.

But, as the prisoner's complaint has been loud upon this head, I must beg leave to recall the attention of your Lordships and the jury to one of the facts libelled, from which the accession to the murder is inferred; it is the supplying the murderer with money to enable him to fly from justice. Let it be remembered in what manner it was executed. The prisoner was indulged by the officer commanding the party that apprehended him to speak with his wife apart before he was carried off; the use he made of that indulgence was to give her the greatest part of the money in his pocket, with instructions to send it and the

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Mr. Erskine murderer's clothes to the place where it had been concerted he should wait for them.

The indulgence upon the part of the officer was natural and humane. From the circumstances that were then known, there was no reason to suspect that such use would have been made of it, and by God's good providence it is become a material circumstance in the investigation of the source of the horrid scene of iniquity before the Court.

Now, as this fact is admitted to be true, I must submit what foundation there is to complain of severity; whether the commanding officer had reason to repeat such indulgences, or to give unlimited access to his family and relations. Nevertheless, I am well authorised to say that at Fort-William the prisoner had many and great indulgences of this kind; that he was allowed to take the air in the garrison, and to converse with his friends and relations in such manner as was consistent with the safe custody of his person and the inquiries which were then carrying on by the proper officers; and, both before and since he was brought to this place, his agent and lawyers have had access to be with him as often as applied for in a proper way. He was not, indeed, allowed access to some of his servants and dependants, from whom material evidence was expected, with whom he had been tampering, and who had declared they were overawed by his authority; but for that I apprehend no apology is necessary.

In the last place, your Lordships have heard much from the counsel for the prisoner of unfair means that have been used to traduce his character in the country, and to prepossess the world with an opinion of his guilt, by which he is said to be, in some measure, condemned before he is brought to trial. I must beg your Lordships and the jury to consider the circumstances of the prosecutors who are charged with these practices. Has the disconsolate widow, who has no relation and scarce an acquaintance in this corner of the island, been so successful in prepossessing the country with an opinion of the prisoner's guilt? Or are her children, as yet incapable of speech, fit to assist her in traducing his character?

If the relations of the deceased had attempted it without foundation, they would have gained no credit with the impartial world, or would have been counterbalanced by the numerous relations of the prisoner, at least in this country. Nevertheless, my Lords, I will admit that he labours under great disadvantages upon this head; a general opinion of his guilt has prevailed, and I am sorry to say that he has many and strong adversaries who have been busy to establish it. *Magna est veritas et prevalebit.* The horror of the crime with which he is charged has raised the attention of every impartial person, and made them industrious to discover the authors of it.

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The blood of the innocent has called aloud to heaven for Mr. Erskine justice, and, by a remarkable concurrence of many circumstances, brought to light by the declarations of a cloud of witnesses, the prisoner is clearly pointed out, not, indeed, as the executioner, but the contriver, of the murder, and the aider and abettor of the murderer.

I will not say that his character in private life concurs against him; I have no authority from my employers to assert it, nor will I assert what is not supported by evidence. But I must say that his family and connections, his character and conduct in public life, are so many circumstances forming a presumption almost equal to a proof in support of the charge brought against him. These are the most powerful adversaries he has to struggle with, and from them that general opinion of his guilt has taken its rise which is unjustly ascribed to the prosecutors.

What has been said, my Lords, would naturally lead me, in the next place, to lay open to the consideration of the Court the particular circumstances set forth in the libel, from which the prisoner's guilt is inferred, and to take notice of what has been said in his defence upon that head; but in this I have been well prevented by the gentleman who spoke last, and therefore I shall only beg leave to add a few observations to what has been said by him.

The Court has been informed that Mr. Campbell of Glenure was appointed factor on the forfeited estate of Ardshiel; that the prisoner is natural brother to the forfeited person, in whose absence he fell to have the leading of his dependents and the protection of his family; under that character, as he had an interest, so he had opportunities of opposing the factor in the execution of his office; that this opposition grew by degrees to the height of premeditated malice, which soon after broke out in repeated threatenings, and at last ended in assassination and murder.

On the other hand, the counsel for the prisoner have asserted that there was no enmity or malice between Glenure and him, but, contrarywise, a confidence and friendship, which they offer to support by letters written by Glenure to him. Now, as this must appear to be inconsistent with the charge in the libel, I must beg leave, in a few words, to reconcile them.

When Glenure was appointed factor on the estate of Ardshiel he was so far from showing any disposition to be severe upon the tenants, or to put hardships on the family and friends of the forfeited person, that he treated them with the utmost humanity; and the prisoner in particular had the address to insinuate himself so far into his confidence as to be employed in collecting the rents and advised with in the letting of the farms: and during this period the letters referred to were written. But as the prisoner undoubtedly took advantage of this confidence

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Mr. Erskine to bring tenants into the estate that were entirely under his influence, and to make separate agreements with them in favour of the forfeited person and his family, in defraud of His Majesty and the public, the Barons of Exchequer justly took exception against this part of Glenure's conduct; and, to prevent such abuses for the future, gave him particular instructions in writing to remove the prisoner from a beneficial farm which he possessed, and also any other of the tenants who were connected with, or under the influence of, the forfeited person and his family.

These instructions were executed in part at Whitsunday, 1751, by the removal of the prisoner from his farm; but as he easily procured another in the neighbourhood, and retained his influence over the estate by the means of the tenants he had placed there, he discovered no resentment at the time.

But so soon as the factor, in the further execution of his instructions, began to take the proper measures for removing, at Whitsunday, 1752, some of these tenants, he then took the alarm; that was to pluck up his interest by the root, and entirely to put an end to his influence. He therefore made the cause of the tenants his own, and every method of opposition was tried to prevent their removal.

He no longer affected any intimacy or friendship with Glenure, but took every occasion to raise discontent and jealousies against him, and represent him as an oppressor in the country. At last, without any authority from the tenants who were to be removed, he took a journey to Edinburgh at his own expense, and applied, by a Bill of Suspension, to the Court of Session in their names, in which the factor's conduct was set forth in such false and odious colours as procured a Sist or Stop of Execution of the Decree of Removing pronounced by the Sheriff at the factor's suit; and by the same false suggestions he so far imposed upon such of the Barons as were then in town as to make them listen to his complaints against Glenure.

When Glenure was informed of all this, he went directly to Edinburgh by great journeys, and as soon as he had an opportunity of being heard he obtained a removal of the Sist from the Court of Session, and satisfied the Barons that he had conducted himself entirely by their instructions. And, having been only two days in town, he returned with expedition to the country, Whitsunday being then near at hand.

This scheme being frustrated by the diligence and activity of the factor, measures of a different nature became necessary.

The prisoner had no hopes of being able to keep up his influence and interest in the estate while Glenure continued to have the management of it; and if he should be able to get the better of him, he had reason to think no other would be so hardy as to undertake it. It was therefore resolved to take him off, and that before he should remove the tenants.

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For the execution of this scheme a very proper assistant was at hand—Allan Breck Stewart, a person in desperate circumstances, who had already forfeited his life to the law, and enlisted himself an enemy to the liberties of his country, a dependent of the family of Ardshiel, brought up from his infancy under the care and authority of the prisoner.

With this assistance, no method was left unattempted to stir up the populace, or some of the hardiest among them, to cut off Glenure by violence. Their attachment to their chief was made use of for that purpose. The preservation of his family, the welfare of their country, and even the very being of the clan, were represented as inconsistent with allowing Glenure to live. Reproaches were used to some, rewards offered to others, and strong insinuations made by the prisoner to his own domestic servants; but all this had not the desired effect.

Wherefore on Monday, the 11th May, Allan Breck, who had no other occupation but wandering from house to house amongst his friends, and was thereby well able to trace all Glenure's motions, came to the prisoner's house, when the resolution appears to have been taken that Allan himself should set out early next morning to waylay Glenure and take the first opportunity to perpetrate the murder.

This was no difficult task to one who knew the country. There was but three days to run to the term for the removing. In that period it was known that Glenure was to go from his own house to the Sheriff's Court at Fort-William and return to the lands from whence the tenants were to be removed. The nature of the country, and the several ferries which he could not avoid, made it certain what road he must take, and a wood near the lands afforded a proper place for the bloody deed. But Allan's dress, being the French uniform, was too remarkable for an executioner of the works of darkness. He was therefore supplied with another, of the usual colour and fashion of the country, by the prisoner. The Court has heard how he then took his station at a place within sight of Glenure's house, till he saw him set out for Fort-William, and then how he retired towards a ferry, where it was known Glenure must pass in his return.

In the meantime, messenger after messenger is sent to Fort-William by the prisoner to get more particular intelligence of Glenure's motions. On the night of the 13th Allan came to a place adjacent to the ferry, and retired in the morning into the wood, from which he only came out to inquire if Glenure was passed. About this very time a gun belonging to the prisoner was amissing, and in the evening Glenure was shot in the wood.

When the horror of the murder threw all the neighbourhood into confusion and consternation no surprise appeared upon the prisoner or in his family. Their attention was entirely

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Mr. Erskine fixed upon the execution of the measures that had been concerted for facilitating the murderer's escape. For that purpose a messenger was despatched to procure money; upon the return of that messenger (though the prisoner was then in custody) the money he brought, with what more the prisoner could afford, and also the French clothes, were, by the prisoner's direction, carried to a remote place in the mountains, where Allan Breck had for some time waited in expectation of them. At the same time the prisoner's arms, which had been concealed near his house, were discovered; and the very gun which had been missing on the day of the murder was found amongst them, with such marks as showed that it had been lately discharged.

Thus, my Lords, as I had occasion to mention some of the facts to be proved, I could not resist shortly running over the whole in order to lay them in one view before your Lordships and the jury.

And from this view I apprehend it will now appear, *primo*, that the friendship mentioned by the counsel for the prisoner does not derogate from the probability of his guilt. It is a natural, and even a necessary, link of the chain upon which the whole depends.

*Secundo*, it must occur to every one who hears these facts that though it is possible, barely possible, that several of them might have happened though the prisoner had been innocent of the crime that is charged upon him; yet it is impossible to conceive that such a long series of circumstances, connected and corresponding with one another, all concurring to answer the same end, should be the mere effect of chance, and not the consequence of intention and design.

To take an instance, it is very easy to believe that Allan Breck might have changed his clothes, though he had not intended to murder Glenure, and that he might have lodged for some nights near Glenure's house, though he had not intended to lie in wait for his life, but when we find the same Allan Breck himself threatening to murder Glenure, and instigating others to do it, afterwards changing his clothes, lying in wait at different times and in secret places, appearing and anxiously inquiring for Glenure near the time and place of the murder, and, as soon as it was committed, flying with terror and precipitation, who can doubt that he was the murderer?

In the same manner it may be well supposed that the prisoner might have lent Allan Breck a suit of clothes, or given him entertainment in his house, though he had not instigated him to commit the murder. But if it is considered that Allan Breck had no quarrel with Glenure, other than what he was engaged in by the influence and authority of the prisoner; that he carried the resentment, on the prisoner's account, to such a height as to threaten to shoot Glenure, and joined the prisoner

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in prompting others to do it ; that when Glenure returned unexpectedly from Edinburgh Allan Breck went immediately with the intelligence to the prisoner ; that when he set out to lie in wait for Glenure, it was after a consultation with, and being accoutred for that purpose by, the prisoner ; that the gun with which he shot Glenure appears to have been the property of the prisoner ; that, after the murder was committed, the murderer relied for money and clothes for his escape, and actually did receive them, from the prisoner ; I say, let all these concurring circumstances be laid together, and who will doubt that he was instigated, aided, and abetted by the prisoner ?

It is therefore in vain to urge that one or more of these facts, when taken separately, are not relevant to infer the conclusion of his guilt. It is from the connection and concurrence of the whole that the conviction of his guilt does arise, and it is only from a proof of the whole that the prosecutors expect a judgment against him.

In the last place, the counsel for the prisoner have urged a point of law in his defence, namely, that, supposing the facts that have been set forth to be relevant to infer his guilt, as he is only charged as an accessory, he cannot be brought to trial for the crime until the principal be first convicted. In support of this, texts have been quoted from the old law books, "*Quoniam Attachiamenta*" and "*Regiam Majestatem*." It has been said that this is the law of England at this day, and that Sir George Mackenzie, in his treatise on crimes, has laid it down to be the law of this country.

As the word "accessary" is a relative, which cannot be without a principal to which it relates, it must be admitted that no evidence will be sufficient to convict an accessory which does not prove that the crime was committed by the principal, who is thereby convicted, to the effect that justice may be executed against the accessory.

In this sense the maxim is just ; but in the sense in which it is pleaded for the prisoner I will take upon me to say it is not supported by the law of this country ; it is inconsistent with the principles of public policy, and subversive of all civil society.

It is indeed a maxim, and a good one, in the law of Scotland, that no person can be condemned, so as to suffer the punishment appointed by law for any crime, unless he be present in Court, and have opportunity to object to the evidence by which it is to be proved against him. But in the present case it is not alleged that Allan Breck could be condemned and brought to justice upon the evidence that is to be brought, in his absence, against the prisoner. If he shall afterwards appear and stand his trial, the proof, in so far as it relates to him, must again be repeated in his presence, and it will be competent to him to object to every part of it. But at present, as the evidence is

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**Mr. Erskine** brought only to the effect that the prisoner may be punished, it is he only that can plead the benefit of this maxim; and it is competent to him to object, as well to that part of the evidence which fixes the crime upon the principal, as to that which proves his accession.

As to the law of England, I will not take upon me to argue from it. I do not pretend to be versant in it, nor do I apprehend it will be decisive in this case. Nevertheless, I have reason to believe that it is the practice in that part of the kingdom to proceed to the trial of the accessory after the outlawry of the principal; from which I would infer that, in our practice, either the fugitation has the effect of the outlawry, or there is no argument to be drawn from the one law to the other.

With regard to the old law books mentioned, it is well known to your Lordships that they are generally believed to have been transcribed from the laws of England, at a time, indeed, when many salutary alterations are thought to have been introduced into our practice from thence, but that it is by no means admitted that they were ever engrossed into the body of our laws, or that every part of them has been confirmed by our practice. Many instances of the contrary might be mentioned. But I forbear to consume the time of the Court upon this question, because the only ground I can find to suspect that it ever was held to be a doubt in our practice is the 153 Act, 12 Parl. Ja. VI., which appears to have been made with a view to take away all doubt for the future. The words of this statute are—"That in all time cumming all criminal libeles sall containe, that persones compleined on are airt and pairt of the crimes libelled; quhilk sall be relevant to accuse them thereof; swa that na exception or objection take awaie that part of the libell in time cumming," which, in more modern language, imports that for the future no objection shall be sustained against a libel which charges the person accused of being contriver, adviser, aiding, abetting, or assisting, in a crime that is otherwise relevant.

And Sir George Mackenzie, in that very passage of his treatise on crimes which has been quoted on behalf of the prisoner, though he lays down the arguments which have been suggested on both sides by the authors who have treated this question, he concludes with observing that, in *Robertson's case*, the Court found upon this Act that an accomplice might be tried though the principal had not been convicted nor fugitated.

Upon these principles the practice has been uniform for many years, and the present circumstances of the case do not seem to afford any reason to deviate from it. For your Lordships and the jury must be convinced, from the facts which have been opened, that as the murder was committed with the advice, and at the instigation, of the prisoner, so, but for his aiding,

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abetting, and assisting, the murderer had been now also Mr. Erskine prisoner at your bar.

LORD ADVOCATE—My Lord Justice-General, I stand up at this time to support the reply that hath been made by the learned and ingenious gentlemen on the same side with me, to the defences that have been offered for this pannel; but as it hath not been frequently practised by my predecessors in office to attend in person at Circuit Courts of Justiciary, I beg leave, first of all, to say a few words for myself, to give the reason of my being now here; and I am persuaded that every one who now hears me will believe me when I declare that, negatively, that hath not proceeded from any particular animosity against this unhappy man in the pannel, whom I never saw until this day when he appeared there; neither is it singly because it is a horrid and atrocious murder that is to be now tried; or that the trial is to proceed upon indirect and circumstantial evidence, because such cases have often occurred. But the truth is, that, upon my first hearing of this murder, in the month of May last, of a gentleman of this country, the King's factor upon certain of the forfeited estates that had been but a few weeks before annexed to the Crown unalienably, and the produce of them appropriated by law to the most salutary and beneficial purposes, for the future tranquillity of the United Kingdom in general, and for the immediate advantage and improvement of these Highland parts of Scotland in particular, I was greatly shocked, and considered the murderers, who, they were, as having been guilty not only of a most horrid crime against the laws of God and humanity, but, together with this, of a most audacious insult against the most gracious and beneficent acts of the King's Government, and of the whole Legislature; and as far as in them lay, had endeavoured to make the world or the public believe, that the civilising of the Highlands of Scotland was a vain and impracticable attempt; and, under this impression, I then resolved, whenever a discovery should be made of any persons concerned in this wickedness, to attend at the trial wherever it should be, and to do all that in me lay, consistently with law and justice, to convince the disaffected part of the Highlands of Scotland, that they must submit to this government, which they have several times in vain endeavoured to subvert.

And now, as to this trial itself, your Lordships have heard the libel read, and some parts of the evidence which we expect to bring in support of it, more particularly opened by the gentlemen who spoke on the same side with me; and none of these things shall I now repeat, but only make a few observations upon what hath been offered by the counsel for the pannel by way of defence.

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Advocate

And, first of all, in order to lay out of the case what is foreign to the merits of the trial, the pannel's counsel have been pleased to take notice of certain hardships, or grievances, that he has lien under during his confinement in the garrison of Fort-William; and that, by the precaution of the private prosecutor, all the old experienced counsel have been retained from giving him their assistance. As to the former of which supposed grievances, I am truly ignorant of the particular facts upon which the complaint is founded; but if it be true that the pannel was longer kept in close confinement than he should have been, or until the commanding officer was informed how the law stood, the pannel can be under no real disadvantage on that account in his present trial, because he was first taken into custody on Saturday, the 16th May, that is, about four months ago; and supposing it true, that, for some few days of so long a period, people had not access to him, whom he had a mind to see, he has had full time, when all these are deducted, to make the necessary provision for his defence.

As for the other alleged grievance, I myself know certainly the foundation of that, and, so far, it is true, that after I had expected, for some time, to receive from the Sheriff-depute of this county the result of his inquiries concerning the murder of Glenure, and the examinations he had taken on that subject, these were, at length, brought to me at Edinburgh by certain of the family of deceased, who had taken upon them, as it was very just and natural, to be managers and conductors of the inquiry, and to cause to be brought before the Sheriff to be examined all persons who, according to their information, could give any light in the affair; and with the examination so taken, they brought along with them to me three learned counsel, which was also very reasonable and usual, and, as in all other cases, was to myself most acceptable, that we might jointly consult and deliberate, whether from these examinations, and the discoveries thereby made, there was matter sufficient for bringing this pannel to trial, upon which question we all agreed in the affirmative, but these three gentlemen, though very able in their profession, were not *all* the experienced counsel. And, as it is my constant wish to see every pannel as ably defended as his cause will bear, it is with pleasure that I now see this pannel attended by four of my brethren, who, I am sure, will omit nothing material for his service.

Upon the cause itself there is in reality no place for a debate on the relevancy of the libel, nor does there appear to me to be any difference betwixt us concerning the interlocutor: that we desire or expect to receive from your Lordships, for the gentlemen of counsel for the pannel have admitted the atrocity of the crime charged upon him as strongly as I am

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able to express it; and they further admitted, as they must have done, that the charging of the pannel as being guilty, or art and part of that crime, is relevant to infer the conclusion, and necessarily requires his being remitted to the knowledge of an assize, whether he is so guilty or not. Lord  
Advocate

And, on the other hand, I readily admit to them that the laudable and just practice of this Court of later years hath been, not to find or determine a particular relevancy upon certain facts or circumstances set forth in the subsumption or minor proposition of the libel, which is, indeed, in some measure, to pre-occupy the province of the jury, who are the judges of the fact, and is also dangerous to the course of justice, because when a number of facts and circumstances were found jointly relevant to infer the pannel's guilt, if the least material of these should not be proved, although a more pregnant circumstance, that was not specially libelled or expressed in the interlocutor, should come out upon the evidence, if the jury followed the directions of that interlocutor and adapted their verdict to it, the pannel behoved to be acquitted, though, in reality and in their opinion, he was guilty.

It was not, therefore, with intent that your Lordships should give your opinion upon the relevancy and sufficiency of the facts and circumstances set forth in this libel, that these were so particularly there inserted; but this was done agreeably to some of the best precedents in the records of this Court for the furtherance of justice, both in respect of the prosecutors and of the pannel; for the former, that as the evidence to be brought is circumstantial, the jury may be the better able to ponder the several circumstances, and connect them together, and attend to the evidence that shall be brought for proof of them; and for the sake of the pannel, that he, knowing the principal facts that were to be proved in support of the charge against him, might prepare the evidence for his vindication and for explaining those appearances of guilt with which he was loaded, in the best manner he should be able.

Another thing concerning the interlocutor to be pronounced by your Lordships—in which I most readily agree with the pannel's counsel—is that he should be allowed to prove the several facts alleged for his defence and every pertinent fact or circumstance that he or his counsel think may be available for proving his innocence.

And thus far we seem to be agreed on the terms of the interlocutor, if the trial is at all to proceed, against which one previous objection hath been made, namely, that this pannel, who is only said to be charged as accessory, cannot be tried before the principal. Allan Breck, be first discussed; in support of which objection they have alleged certain passages in the old books of the law, and Sir George Mackenzie in his "Criminals" (title) Art and Part, paragraph 9.

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But to this I answer, first of all, that Sir George Mackenzie himself in the passage referred to furnishes an answer to the objection, for after stating the question, whether accessories can be sued till the chief actors be first discussed, and quoting the passages in the "*Regiam Majestatem*" and other old books that favour the negative, he adds a decision of that question in this Court in these words—"Notwithstanding all which, Charles Robertson being pursued as accessory to the casting down of a house, which was libelled to have been cast down by his sons and servants at his command, the justices found that he might be put to the knowledge of an inquest, although the children and servants were not first discussed, because the Act appointing a libel to be relevant, bearing art and part, did abrogate the foresaid (4th verse, 26th chapter, L. 4 R.M.), since such as are pursued as art and part are all principals." This was the decision of the Court and the reason of it, founded on the Act 1592, chap. 153, which enacts, "That, in time coming, all criminal libels shall contain that persons complained on are art and part of the crimes libelled, which shall be relevant to accuse them thereof, so that no exception or objection take away that part of the libel in time coming."

The author proceeds in the same passage to recite some part of the argument previous to this decision, and says, "that the advocate alleged it were absurd that the King should be prejudged by the absence of the principal party, to which it was answered that the King was not prejudged, seeing, if the principal party were discussed and denounced fugitive, the accessory might be proceeded against."

Now this is what hath been done in the present case. Allan Breck Stewart hath been called upon to stand trial for his part in the same offence, and hath been denounced fugitive for not appearing to abide his trial, which is discussing him as far as the laws of this land admit of when his person is not in custody.

But further, it is to be observed, that Allan Breck is not charged in this libel with being the principal, and this pannel as only accessory to the murder of the deceased Glenure. They are both charged in the same words with being guilty, actors, or art and part of the said heinous crime; that is, in the terms of the statute of King James VI. just mentioned; and though it be true, that, in the subsumption or recital of the facts, it is said that the actual murder or firing upon the deceased was committed by Allan Breck, it is also said that this was done in revenge of the quarrel which this pannel took up against the deceased, and, in pursuance of a concert or conspiracy betwixt the pannel and Allan Breck, to take away the life of Glenure; and such being the case, they are in reality both principals. By the law itself (L. 15, *ad legem Corneliam*

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*de sicariis*), *mandator cædis pro homicida habetur*; and the Lord Advocate learned Matheus, *de criminibus*; in his *prolegomena*, c. I., sec. 12, *qui mandant scelus, quique mandatum exequuntur, utrique rei sunt, and ordinariæ quidem penæ subjugandi*; and for proof of this brings many arguments and authorities; and, *inter alia, cum quis alicui mandat scelus mandantem quidem caput esse; mandatarium vero manum, and instrumentum mandantis. Hinc sacro quoque oraculo cædes Uriæ Davidi impingitur*; 2 Sam. xii. 9, in which text the words of Nathan the prophet to David are, "Thou hast killed Uriah the Hittite with the sword."

And, indeed, it seems not to be agreeable to reason or natural justice to hold that if this Allan Breck, for instance, the actual manslayer in the present case, instead of making his escape beyond sea, as probably he hath, had died a natural death, and so become out of the reach of all human laws before this trial could be brought on, and supposing the most direct and positive evidence could be brought that Breck committed the murder libelled by the counsel, command, or direction of this pannel, or, as our old laws express it, out-bourded by him, that yet this pannel could not be brought to justice because, truly, though the author, he was not the very *actor cædis*.

But that such is not the law of Scotland at this day, besides the case mentioned by Sir George Mackenzie, I need only remind your Lordships of the very last trial in the Court of Justiciary at Edinburgh of James Drummond Macgregor for being guilty or art and part of the crimes of hamesucken, forcible marriage, and rape, for all which the trial proceeded against him, and though, in the crime of hamesucken, he and his accomplices might be all equally principals, yet in the forcible marriage and rape, Robert, his younger brother (to provide whom with a wife and a fortune, that wickedness was committed), was no doubt the principal party and actor; and yet Robert had been no otherwise discussed than Allan Breck has been in the present case, that is, called upon to abide his trial for these offences, and pronounced a fugitive for not so doing.

As for the argument which the counsel for the pannel have chiefly insisted upon, and which they have professedly, and, I think not improperly, calculated for the jurors who now hear us, namely, to impugn the relevancy or sufficiency of the several facts and circumstances libelled, to infer the pannel's being guilty or art and part of the murder in question, I do not choose at present to enter particularly into that argument, but to reserve that till we come to sum up the evidence to the jury, such as it shall come out in their presence, which may possibly, in some articles, be weaker and in others

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stronger than what is set forth in the libel from the materials that we then had before us; but, in order to shorten our work at the end of a long trial and to engage the attention of the jury to the evidence that shall be brought before them in support of this libel, I beg leave now to make a general observation or two for their sake.

It hath been admitted by the counsel for the pannel that, even in the trial of crimes, circumstantial evidence, when clear, is not only competent, but perhaps the most satisfying and convincing proof of any, and it was well said, "that circumstances are inflexible proofs, that witnesses may be mistaken or corrupted, but things can be neither," to which I will add that the competency of such evidence for inferring the ordinary capital punishment for murder, was solemnly decided in the Court of Justiciary at Edinburgh in February, 1718, in the trial of Stewart Abercrombie for the murder of Alexander Hay, son to Mr. Robert Hay of Naughton, in which the argument was treated with great learning and full information on the debate written by the now Lord President of the Court of Session, who was the prosecutor, and by the now Lord Justice-Clerk, who was of counsel for the pannel. And I mention that case, which I have lately perused in the record, to give your Lordships and the jury a specimen of a circumstantial evidence of murder that, in its general nature or complexion, was very similar to the present. The case there, in short, was that some days before the murder Mr. Hay, the deceased, and Stewart Abercrombie, the pannel, had been in company, when Hay complained of an affront given him by Abercrombie, upon which nothing then ensued; but just before the murder, which happened about nine at night of the 6th December, 1717, Abercrombie was drinking in a tavern near the head of Black Friars Wynd, when Mr. Hay came into the house and made one of the servants call him out into another room. Abercrombie went to Hay, leaving his hat in the room where his company were. They went out together near to a lamp at the head of the wynd, where a scuffle ensued betwixt them, without either of them drawing, though they both had swords, and during this scuffle Abercrombie drew his sword and ran Hay through the body, who was heard cry he was murdered and had got foul play, his sword not having been drawn, and soon after dropped down dead. Abercrombie was still without his hat, and was seen by no person who knew him during the scuffle; they only saw the man without the hat stab the other who had one; and after he had given the wound, instead of returning to his company, where he had left his hat, called at another tavern, where he borrowed a hat, and went directly to his own house and to bed, where he was that same night apprehended.

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In the libel against him all the circumstances are particularly set forth, and in the information for the prosecutor there is the following passage which I have extracted and beg leave here to read:—"The pannel trusted to the darkness of the night and secrecy in which he had committed this crime as sufficient to cover him from the eye of justice and prevent his punishment, but that same wise Providence, which sometimes leaves men to execute their wicked designs in such a manner and under such circumstances as emboldens them to go on with hopes of impunity, frequently brings those very crimes to light by a wonderful discovery of unforeseen incidents and circumstances concurring to fix the guilt upon the criminal with more force of conviction and strength of evidence than two concurring witnesses could give on purpose, to convince the world how little darkness or secrecy are to be relied on either as covers or encouragements to wickedness.

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Advocate

"Such is the case of this pannel. Had it not been by the small chance of his leaving his hat in the room with the company where he was when he came forth to perpetrate this crime he might have gone off undiscovered. But that small accident, first, indeed, taken notice of by a child, who observed the hat in the cellar, and knew it to be Mr. Abercrombie's, led those concerned to a full discovery of such other concurring circumstances as, supposing no positive proof of the fact should appear, are more than sufficient to condemn the pannel in the eyes of every judge and jury and of every person else who will lay himself open to receive impressions from truth."

The jury in his case were of that disposition; he was convicted of the murder, and suffered for it.

Another remarkable instance of this nature was the case of Alexander Maccowan, who was tried by two of your Lordships here present at the Circuit held at Perth in May, 1750, for the most horrid murder of Margaret Maclean and of Margaret, his own child by her, an infant of about three or four years of age, committed in August, 1749, not far from Crieff, in the shire of Perth, in a thicket of wood, where he left their bodies, after having carried away the money and clothes which the said Margaret had along with her in a bundle. Before the bodies were discovered they were so mangled that they could not be known otherwise than by the clothes which were on the body of the woman, which her relations could swear to. The evidence against the pannel was wholly circumstantial, and consisted chiefly of there being found in his possession after the murder a pair of stockings, a linen shirt, and a muslin stock that were proved to have been in possession of the deceased when she set out for Edinburgh, where she had told her relations she had been invited by the pannel to go along with him in order to their being married together;

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and upon this evidence he was convicted of this double murder and robbery, and, upon your Lordships' sentence, suffered the punishment that he so well deserved.

My Lords, it appears to me that the present case affords a fresh instance, similar to these I have mentioned, of a providential discovery of circumstances serving to fix the guilt of accession to this murder upon the now pannel, notwithstanding all the precautions by him used to conceal it; his enmity against Glenure for removing him from his own possession in May, 1751, and discontinuing to employ him in the management of the Ardshiel estate, was well known, as likewise the various efforts he made to prevent the removing of certain tenants of Ardshiel in the month of May last; and also his intimacy and close connection with Allan Breck Stewart, who disappeared abruptly immediately after the murder, and to whom the voice of the whole country imputed the actual murder itself; but as, when that happened, this pannel was at his own house, at the distance of one mile from the place of the murder, the more direct and immediate evidence of his accession to it was long concealed: his wife and his daughter being examined upon oath before the Sheriff-depute of this county on 22nd and 25th of May last, touching what they knew concerning the murder, deposed—That Breck Stewart left the pannel's house on the morning of Tuesday, the 13th of May, dressed in his French clothes, and that the pannel had no such black or dark-coloured short coat as Breck had truly left his house dressed in for three-quarters of a year before that time; but at length, above a month after this examination, namely, on the 30th of June last, Alexander Stewart, the packman, being examined before the Sheriff-Substitute at Fort-William, and after being confronted with a friend of his own, to whom he had been muttering some part of the truth, spoke out the whole truth, as it is set forth in the libel, and particularly that from this very wife of the pannel he received, on the evening of Saturday, the 16th, at the pannel's house, Allan Breck's French clothes, to be carried to him at the place of his retreat, together with the five guineas, which the pannel had been at great pains to scrape together, after sending the packman express for that purpose to his friend William Stewart, at Fort-William, and which he sent to Breck at the place of his retreat, with a declared intent to put him in condition to make his escape, for that he must be suspected of the murder. This discovery was the first thread which the kindred of the deceased got hold of to lead them to a more full detection, and was afterwards confirmed by the examination of the bouman, who told the particulars in the libel recited, and about whose house the very clothes were found, the property of the pannel, which Breck had brought from the pannel's and left with the bouman.

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And as for the importance of these particular discoveries, which the pannel's counsel have endeavoured to diminish in the manner that circumstantial evidence is always impugned, by observing that each article taken by itself is inconclusive; I may readily admit this, and yet from the result of the whole circumstances there may be convincing and irresistible evidence. And to mention at present only these two material ones of the clothes furnished and the money sent to Breck Stewart before and after the murder respectively,—I do not say that if a man lends his neighbour a coat, in which the borrower, being dressed, two or three days after commits a murder of a person who was his own enemy in time past, that this will afford any evidence of privity or accessions to that murder in the lender of the coat; neither do I say that if a man's friend or relation has unfortunately committed a murder, and one shall aid him by money or otherwise to make his escape, that this will render such friend accessory to, or chargeable with the crime of, murder, though he is doubtless guilty of an offence or misdemeanour in its own kind; but the force of these united circumstances in the present case, with the others charged in the libel against this pannel, consists in the connection of the whole together. It was the pannel's proper quarrel that rendered the deceased obnoxious to Breck Stewart; the pannel had discovered and expressed his enmity against the deceased, and had uttered threatenings against his life; Breck Stewart, his intimate friend, was a fit instrument for such wicked purpose. He had espoused all the pannel's opinions and dispositions towards Glenure; he was himself not in condition to remain in this country, and was already provided with the means of subsistence in foreign service; and this man it was, in the very heat of a contest with the deceased about removing certain tenants which this pannel had put in, that he furnished the dress and, as we likewise believe, the arms wherewith he perpetrated this foul murder, immediately after which he retires to a desert place, not far off, there to wait for a supply of money that was to be sent him; and it is especially to be remarked by your Lordships and the jury that, as the libel bears, at this place Breck told the bouman that he must go to Fort-William with a letter to William Stewart, merchant here, who, he said, would give him money upon receipt of the letter; and this William Stewart was another intimate friend of the pannel's, and the very person to whom, the day after the murder, the pannel sent the packman express to get five guineas for the use of Breck, who was about to leave the country. This circumstance affords a demonstration of a concert betwixt the pannel and Breck before they last parted at the pannel's house on the Monday night or Tuesday morning preceding, after which the pannel allows he never saw Breck, for how otherwise could Breck have known

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**Lord Advocate** that for such a small sum as he wanted the pannel was to have recourse to this William Stewart, who lived twenty miles distant from him? And this circumstance serves to connect the facts which immediately preceded the murder with those which immediately ensued it.

But I am going too far at present on the consideration, that will be proper for the jury after the proof shall have been brought before them, and shall now conclude, hoping it will appear to your Lordships that no sufficient objection hath been offered on the part of the pannel, why his trial should not proceed, and that you will make such interlocutor as, upon that supposition, the counsel on both sides appear to be agreed in.

**Mr. Miller** **MR. THOMAS MILLER**, for the pannel—My Lord Justice-General, I appear as counsel for the prisoner at the bar; and as I am sensible this trial must draw out to a very great length and occasion a great deal of necessary trouble to your Lordships and the jury, I shall endeavour, in what I am to offer, to avoid repetition, and I shall confine myself to such observations as most affected my own mind upon reading the indictment, which is the only rule by which I can judge of their importance; and, secondly, I shall offer a few considerations by way of reply to what has been said by my Lord Advocate and his assistants in support of the indictment.

The prisoner is charged before your Lordships as accessory, art and part of the murder of the late Mr. Campbell of Glenure, a crime of so foul and black a nature, and attended with such particular circumstances, as has not only justly excited the attention of the public, but also a more than ordinary keenness and ardour in the numerous friends and relations of the deceased in carrying on this prosecution.

I would not choose to make any reflections upon their conduct. I sincerely sympathise with them for their loss, and feel the full force of their just revenge against the guilty person, whoever he is. But, my Lord, in such a case the passion which we at first cherish as just and honourable may get the better of us, and, if the restraints of reason and strict honour are not applied, will insensibly rise into rage, and precipitate us into measures inconsistent with law and the dictates of cool humanity.

My Lord, it is in such circumstances as these that even the innocent may sometimes be brought into danger. And in such circumstances it becomes the duty, and an honourable part of the duty, of one of my profession to appear for the accused, to assist him in his just defence, and to obviate, by all the remedies which the law has provided for the security of innocence, any disadvantage he may be brought under by public prejudice or by the number, power, or superior address of his private prosecutors.

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This consideration determined me to appear in this trial, **Mr. Miller** and to give my poor assistance in the defence of the prisoner, to which I was further prompted by my Lord Advocate himself, who had the generosity so far to interest himself for the pannel as to recommend it to me, amongst others, to appear in his defence.

And, first, I observe that it is admitted by the prosecutors in their indictment that the barbarous murder therein charged was perpetrated by one person, to wit, by Allan Breck Stewart; and, taking him to be the guilty person, his life is, no doubt, justly forfeited to public justice, though, in the meantime, he may have escaped from the execution of the law. The first question, therefore, that must naturally occur is, what are the circumstances in this case which should lead your Lordships or the jury to believe that any other person than Allan Breck, and particularly the prisoner at the bar, was also guilty of this foul and detestable murder?

It is a rule in philosophy in all our inquiries into natural causes and effects to rest satisfied so soon as one cause or principle is discovered, sufficient for answering and solving all appearances in the effect. This rule, I am sure, with great propriety may and ought to be applied to any moral or judicial inquiry such as the present. If a crime is committed there must no doubt be a criminal, and if the crime itself or the circumstances which attended the commission of it are of such a nature as must necessarily infer the aid and assistance of others towards the commission of it; as the appearances in such case will not be answered by the discovery of one guilty person, the mind will remain unsatisfied till further discovery is made of the supposed partners of the crime.

But, my Lord, where the guilt of one will account for the whole appearances, for every circumstance connected with the crime, I apprehend it as a rule in morals—it is a rule in law and in sound reason—to presume that no other but that one person was concerned in the commission of the crime.

This presumption is founded in the respect which we owe to human nature. For, my Lord, wicked and corrupted mankind are, thank God, a murderer, a wilful, deliberate murderer, is still a monster in the species, and it is undutiful in us and against all the rules of right reason to carry our suspicions, far more our prejudices, further than the *corpus delicti* and the circumstances attending it do necessarily point out.

From this consideration I hope the prisoner comes to your Lordships' bar attended and aided, not only by the general legal presumption of innocence, but with this other more special presumption, that no other person was concerned in this horrid murder but that one person, whoever he was, who

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Mr. Miller gave the fatal shot by which Glenure died. And this presumption, I flatter myself, will be present with your Lordships and in the mind of every jurymen till contrary proof and evidence shall beat it out, which we flatter ourselves will be so far from happening that, on the contrary, in the course of the evidence it will gather strength, and at last terminate in that issue which, from the holy providence of God, the innocent may with confidence expect.

My Lord, it is not my intention to anticipate or to argue upon evidence which has not yet been brought, but, as my Lord Advocate has set forth in his printed indictment a variety of circumstances from which he would infer the prisoner's accession to this murder, I must beg leave to take notice of some of them in order, if possible, to dispel that popular and illegal prejudice, which I observe in most cases, especially in the more atrocious crimes, does attend the unhappy person who is brought to your Lordships' bar.

When the mind is enraged to a high degree it naturally seeks after, and is impatient to find, an object for its resentment. The prisoner first occurs, and there we are too apt to fix our opinion of guilt, and amongst with it our resentment, especially when our confidence in the Public Prosecutor is so great, as it justly is at present, in the honourable gentleman who fills that office.

This, if I mistake not, is the source of popular prejudice against the unhappy prisoner. All of us are subject to it, because it arises from, or at least is incident to, human nature; but, however innocent it may be in the crowd that surrounds us, it is dangerous, it is criminal, if received and entertained in the mind of a jurymen. For their sakes, therefore, I will beg leave to make a few observations upon the facts charged in the indictment, that so the jury, who for some time have had the printed indictment in their hands, may, before they proceed to trial, be also possessed of such facts and observations for the pannel as will, if attended to, entirely take off the force of the circumstances which are charged against him.

And, first, it will be observed that the murder is not said to have been committed from sudden passion, or *chaud mella*, as the law expresses it, but to have been premeditated and resolved upon for some days before it was committed. Now, to render malice of so high a nature probable, some very strong ground or cause ought to have been assigned for it; and what cause is here mentioned? Why, first, because Glenure had accepted of a factory from the Crown upon the forfeited estate at Ardshiel; secondly, because Glenure had removed the pannel from the farm of Glenduror at Whitsunday, 1751; and, lastly, because he was proceeding to remove certain other of the tenants of Ardshiel at the Whitsunday, 1752.

## Preliminary Proceedings.

The first of these could not be the ground of the resentment Mr. Miller which gave occasion to the murder, because Glenure had been in that office for more than three years before the murder, during the greatest part of which time the pannel and he lived in friendship and intimacy together, as will be clearly proved by a long course of letters which passed betwixt them. The pannel's own removal from Glenduror could as little be the cause of such *prepnse malice*, for the removal was voluntary, and the possession yielded to the succeeding tenant in consequence of a previous concert between the pannel and Glenure. And far less could the intended removal of other tenants at Whitsunday last give occasion to the conspiracy and murder charged against the pannel. Such deep resentment could not have arisen from so trifling a cause in the mind even of a wicked man, much less one of the pannel's disposition and character.

Secondly, the circumstance of Allan Breck's having changed his clothes at the pannel's house before the murder, though it has been chiefly insisted on for inferring the pannel's accession to the murder, is equally inconclusive. Allan Breck's situation as a deserter from His Majesty's service to the rebels, and afterwards to the service of France, made it necessary, so often as he came into this country, to skulk amongst his friends, of which the pannel, unfortunately, happened to be one. It will be proven that for this purpose he used to lay aside his French dress and borrow the dress of the country, such as is described in the indictment, from any of his friends where he happened to visit or reside, and that he had gone about from house to house changing his dress in this manner since the beginning of March last, and particularly had been furnished with such change of dress at the pannel's house about the beginning of April, where he happened to be for a night or two in the course of his visits through the country.

My Lord, if these facts are proven, it is impossible any weight can be laid upon the circumstance of his having also changed his dress at the pannel's house upon the Monday and Tuesday before the murder happened. If a disguise had been intended, would the pannel, who is admitted to be a man of more than ordinary discernment, have furnished his own clothes, which were known to the whole neighbourhood, and by which, if the murderer was apprehended, he himself behaved infallibly to be discovered? Would he have dressed up the assassin before his numerous family and servants in the very dress which was to serve for his disguise two different days before the plot was to be executed? Or would he have allowed him to traverse the country for some miles round from Tuesday, when he left the pannel's, till Thursday, when the murder was committed, in the very dress which was intended to disguise and conceal him? Such conduct is unaccountable, and cannot

## James Stewart.

Mr. Miller be ascribed to the pannel, whom the prosecutors themselves represent as a man of the deepest design and artifice.

My Lord, the next material circumstance in the indictment which I would beg leave to take notice of for the sake of the jury is the correspondence which passed betwixt the pannel and Allan Breck, the supposed murderer, after his retreat to Koalishnacoon.

This circumstance, I own, at first sight, seems to carry great weight against the pannel, because it imports not only aid and assistance given by the pannel to the supposed murderer in order to enable him to make his escape, but also a previous knowledge of the place to which he retired immediately after committing the murder. But your Lordships and the jury have heard how the force of this circumstance is taken off. The pannel knew nothing of the place of Allan Breck's retreat till the day after the murder, when he received a message from him by Donald Stewart, giving him notice of the place to which he had retired, and beseeching the pannel to send him a small supply of money, in order to carry him off the country. This message the pannel has undertaken and hopes to prove by a train of unquestionable evidence, and if he shall be able to bring a satisfying proof of the fact, it will at once strip the indictment of the only circumstance in it which points at a previous conspiracy betwixt the pannel and Allan Breck, the supposed murderer.

And, indeed, my Lord, independent of the proof which is proposed to be brought by the pannel, it cannot but appear unaccountable to your Lordships and the jury that a person of the pannel's sagacity, if he had been in concert with Allan Breck for several days before the commission of the murder, should not have provided the necessary means of Breck's escape till after the crime was committed, when he could no longer correspond with him without the interposition of others, and consequently without the hazard of a discovery. The pannel could have had no difficulty to have furnished Allan Breck with a little money before the commission of the murder in order to make his escape immediately. He knew Breck's circumstances, and that he had nothing to carry him off the country, and Breck would not have engaged in such a service without receiving from his employer the necessary supplies for his own safety; and supposing the pannel had not been in cash upon the Monday when they last parted, yet he would have taken care before the Friday to have been sufficiently provided for answering Breck's demands. And yet upon the Friday after the murder, when the message came from Breck, we find from the indictment that the pannel was obliged to send in to Fort-William, at a considerable distance from his own house, in order to borrow the trifle of money which was wanted, and sent the day following to Allan Breck.

## Preliminary Proceedings.

How far the pannel was to blame in sending money to Allan Breck, who was his relation and had been his ward, in order to enable him to make his escape, depends upon the opinion he then had of his being guilty or innocent of the murder. If he believed him guilty, it was no doubt a very great crime in the eye of law; but such assistance, furnished for the escape of a murderer, though knowingly, will not, in law or in the nature of the thing, infer accession to the murder, unless it had been previously promised as an encouragement to the commission of the murder, which, from what has been said, appears could not have been the case.

With regard to the threatenings, which is the only remaining branch of the indictment of any weight against the pannel, I could have wished my Lord Advocate had been so good as to have condescended upon the particular expressions, and upon the times and places when and where these were uttered. As that is not done, it is impossible the pannel can make any other answer but a general denial of this part of the charge; and as he is conscious he never entertained the barbarous resolution, he hopes, and is persuaded, no proof will be brought of any expression uttered by him which could import a deliberate threatening to take away the life of an innocent gentleman.

My Lord, having touched upon a few of the most material circumstances in the indictment which I thought material for the jury to have in their view, in order to direct their attention during the course of the evidence to the plan of the pannel's defence, I shall next proceed to what at present falls more immediately under your Lordships' consideration, and that is the objection which has been moved to the competency of this prosecution.

It has been objected that the indictment does not charge the pannel as a principal in the murder of Glenure, but only as a remote accessory by previous counsel and subsequent aid and assistance given to the murderer in his escape; and that though such accessory is equally criminal and punishable with the principal, yet that he cannot be brought to trial till the principal be first tried and convicted.

This objection was stated to your Lordships upon the authority of the old books of our law, of Sir George Mackenzie, our only author upon crimes, and of several of the foreign doctors who treat of this subject; and, with your Lordships' permission, I will read some of the passages upon which the objection is founded, as I have taken them down from the books—

*Reg. Maj. lib. 4 cap. 26 de ordine cognitionis in criminibus.*

*Si duo homines fuerint implacitati unus de principali furto, et alter de præcepto, primo debet ille qui defamatur de facto, quam ille qui factum illud committi præcepit, implacitari.*

To which the learned Sir John Skeene subjoins the following annotation:—*Complices criminis non possunt accusari ante*

## James Stewart.

Mr. Miller *principalem malefactorem, nam sicut remoto principali remouetur accessorium ita absoluto malefactore absolvuntur complices et consentientes.*

*Quoniam attachiamenta, cap. 83, de receptatione latrocinii.*

*Nullus defamatus tanquam receptor latrocinii debet puniri, antequam malefactor fuerit convictus vel attatus de latrocinio illo; et hinc fiet ut dicitur, consentientes et agentes pari pœna puniuntur.*

*Statuta Davidis 2di, cap. 19, Complices non debent puniri ante principalem malefactorem.*

*Ordinatum fuit coram rege in pleno parlamento apud Sconam per regem et communitatem regni quod super sedendum est de receptatore alicujus malefactoris judicandi sive appellandi, quosque receptatus judicetur. Et si receptatus quietus fuerit receptor quietus sit sine aliqua alia assisa. Si autem receptatus damnatus fuerit receptor habet assisam.*

And agreeable to the doctrine laid down in these old statutes, Sir George Mackenzie, in his "Criminals," tit. Art and Part, sec. 9, gives it as his opinion "that the chief actor must be first discussed and either found guilty or assoilzied before such as are accessory can be pursued," which he supports not only by the authority of the old books of our law, already quoted, but also of many of the foreign doctors.

'Tis true, he adds, that, notwithstanding what is there laid down, Charles Robertson was tried before the Justices, as accessory to the casting down a house, though his sons and servants, who cast down the same, escaped, and were not tried. But Sir George is far from approving of that decision, and urges many strong reasons against it and in support of the doctrine he had formerly laid down.

The foreign doctors also have generally gone into this distinction, with respect to the order of trying the principal and accessory. I shall only quote the words of Julius Clarus, *quæst. 90, n. 6.*, who lays it down as a rule, *Quando proceditur contra aliquem tanquam quod præstiterit auxilium delicto, debet primo in processu constare principalem deliquisse.*

To all these allow me to add the authority of the law of England, which, upon a point of this nature, supposing it not fixed by any statute or custom of our own, will no doubt have greater weight with your Lordships than the opinions of any private lawyers.

Thus, Sir Matthew Hale, in his "Pleas of the Crown," ch. 57, concerning the order of proceeding against accessaries, lays down the following propositions as fixed rules in the law of England:—"The accessory may be indicted in the same indictment with the principal, and that is the best and most usual way.

"The accessory shall not be constrained to answer to his indictment till the principal be tried unless he waive that benefit; in which case his acquittal or conviction upon such

## Preliminary Proceedings.

trial is good. But it seems necessary in such case to respite **Mr. Miller** judgment till the principal be convicted and attainted; for if the principal be afterwards acquitted that conviction of the accessory is annulled.

"If A be indicted as principal, and B as accessory, they may be both arraigned together and plead together and tried by the same jury, and the jury shall be charged first to inquire of the principal, and if they find him not guilty then to acquit the accessory; and if they find him guilty then to inquire of the accessory."

The reason of this distinction in the order of trying principals and accessories is very well laid down by Sir George Mackenzie in the place above quoted, and will no doubt occur to your Lordships; for guilt in the accessory necessarily presupposes that the crime was committed by the principal, which can only be made to appear by the trial and conviction of the principal. Neither is it sufficient to say that, in the trial of the accessory, such evidence may be brought of the guiltiness of the principal as would be sufficient to convict him if he were present. For as no man can, by the law of Scotland, be convicted of any felony in absence, it is impossible to say or determine from evidence, adduced in absence of the supposed criminal, what would have been sufficient to have convicted him if he had been present. He might have had defences against the indictment, objections against the witnesses adduced for the prosecutor, and witnesses to adduce for his own exculpation, which the accessory doth not know or cannot prove.

The answers made by my Lord Advocate to this preliminary objection to the order of the trial have been three. Firstly, that it is against the interest of society that crimes should pass unpunished, which often must be the case if the escape or death of the principal actor shall be understood to be a perpetual bar to the trial and punishment of those who are accessory and no less guilty in the commission of the crime. Secondly, that Allan Breck Stewart hath been called upon to stand trial for this crime, and hath been denounced a fugitive and outlaw for not appearing to abide his trial, which is discussing him as far as the laws of the land admit. And, thirdly, that both Allan Breck and the pannel are charged by the indictment in the same words, as being guilty actors, or art and part, of the same heinous crimes; which being in the precise terms of the Act 151, Parl. 12th of James VI., nothing can be objected to the relevancy of that part of the libel.

To these I will offer but a word or two in reply. As to the first, founded upon the public expediency and the dangerous consequences which may result from this distinction in the order of trial of principals and accessories, it is sufficient for me to say, "*Incommodum non solvit argumentum.*" The law has been more anxious in providing for the defence and safety

## James Stewart.

Mr. Miller of the lives of the subjects in the trial of crimes than for the conviction and punishment of the guilty. And hence it has become an axiom in the law, "Better that ten guilty persons should escape than that one innocent person should suffer."

To the second, with regard to the fugitation of Allan Breck, I answer that such fugitation does not imply a conviction of the crime, which, by the law of Scotland, can only proceed upon evidence brought against the criminal present in Court upon his trial. An act of fugitation is no more than a judgment of the Court awarding the escheat of moveables against the defender for his contempt in not appearing to stand trial upon his indictment, and neither proceeds upon nor implies the absent person's guiltiness of the crimes charged against him. If he were present his voluntary confession would be no probation of his having committed the crime, so far as concerned the accessary, and far less can his absence imply or amount to such conviction. And this is agreeable to the opinion of Sir George Mackenzie and Julius Clarus, in the places above quoted.

As to the third answer to the objection founded upon the statute of James VI., it will occur to your Lordships, as it did to Sir John Skeene and Sir George Mackenzie, who both wrote after the date of that Act, that it could not be the intention of that law to abolish the distinction betwixt principals and accessaries and the order of proceeding in their trials; all that was meant by that statute was to allow a defender, whether principal or accessary in a crime, to be charged under the general words of art and part without obliging the prosecutor to condescend upon the whole particular acts from which the crime was to be inferred. But if a prosecutor, as in the present case, has brought a special indictment charging a pannel, not as *actor cædis*, but as a remote accessary thereto, the general words of art and part, subjoined to the minor proposition of the libel, can never be understood to imply a charge against the pannel, as principal actor, in contradiction to the special facts charged in the indictment, but only as accessary, and, consequently, in the sense of law, actor, art and part in the commission of the crime.

What is laid down by the learned Sir Matthew Hale, in his fifty-fifth chapter of principals and accessaries in felony, is applicable to the present subject. "In treason," says he, "all are principals, but yet, as to the course of proceeding, it hath been, and indeed ought to be, the course that these who did actually commit the very fact of treason should be first tried before those that are principals in the second degree; because otherwise this inconvenience might follow, that the principals in the second degree might be convicted, and yet the principals in the first degree might be acquitted, which would be absurd." And it is humbly thought that this absurdity would be much greater in the case of a remote accessary.

## Interlocutor on the Relevancy.

Nor does the decision in the case of James Drummond Macgregor apply to the point in hand; for, though the crime was, in that case, committed with a view to procure a marriage for Robert, the younger brother, yet, as James was present, and aiding and assisting in the hamesucken and forcible abduction, consequently he was a principal in the first degree, being an immediate actor in the whole crimes libelled, and therefore could not be entitled to plead the defence which has been offered for this pannel.

What we therefore humbly submit to your Lordships' consideration is that, though an accessory is equally guilty and punishable with the principal, yet, as the law hath laid down a certain order in point of time as to the trials of principals and accessories in crimes, and as this order is not abolished by the statute of James VI., therefore the trial of this pannel cannot proceed until Allan Breck Stewart, the sole actor in the commission of the murder, is first tried and convicted.

But if your Lordships shall find reason for overruling this objection, the pannel hopes and expects from your Lordships' justice, that he will be allowed, by the interlocutor, a proof at large of all facts and circumstances that may tend to exculpate him from the charge exhibited against him in this indictment.

The Lords, upon hearing the criminal letters read and the debate thereupon, pronounced the following interlocutor:—

"The Lord Justice-General, and Lords Commissioners of Justiciary, having considered the criminal libel, pursued at the instance of William Grant of Prestongrange, Esq., His Majesty's Advocate, for His Majesty's interest, and also at the instance of Janet Mackay, daughter to the Honourable Hugh Mackay of Bighouse, Esq., and relict of the deceased Colin Campbell of Glenure, for herself, and on behalf of Elizabeth and Lucy Campbells, her infant children, with concurrence of His Majesty's Advocate, for His Majesty's interest, against James Stewart pannel, with the foregoing debate thereupon, repel the objection to the libel, and find the libel relevant to infer the pains of law: that time and place libelled, the deceased Colin Campbell of Glenure was murdered, and that the pannel James Stewart, was guilty, actor, or art and part thereof; but allow the pannel to prove all facts and circumstances that may tend to exculpate him; and remit the pannel, with the libel as found relevant, to the knowledge of an assize.

ARGYLL, I.P.D."

Thereafter the Lords continued the diet against the above James Stewart, pannel, till the following morning at 5 o'clock precisely, and ordained the parties, witnesses, assizers, and others concerned to attend at that time, and the pannel to be carried back to prison.

## James Stewart.

Proceedings on Second, Third, and Fourth days, from  
Friday, 22nd September, to Sabbath, 24th  
September, 1752.

CURIA ITINERIS JUSTICIARII, S. D. N. REGIS,  
Tenta apud burgum de Inverarii, vicesimo  
secundo die mensis Septembris, Anno Domini  
millesimo septingentesimo quinquagesimo secundo,  
N. S. per nobilem et præpotentem Principem  
ARCHIBALDUM DUCEM DE ARGYLL, Dominum  
Justiciarium Generalem, et PATRICIUM GRANT de  
Elchies, Armigerum, et Dominum JACOBUM FER-  
GUSON de Kilkerran, Dominos Commissionarios  
Justiciarum dicti. S. D. N. Regis.

Curia Legitime Affirmata.

INTRAT. James Stewart, pannel.

INDICTED and ACCUSED as in the former sederunt.

Thereafter the Lords proceeded to make choice\* of the follow-  
ing persons to pass upon the assize of the said James Stewart,  
pannel:—

- Colin Campbell of Carwhin.
- Dougal Macdougall of Gallanah.
- Alexander Duncanson of Kiles.
- Duncan Campbell of South-hall.
- Hector Macneil of Ardmeanish.
- James Campbell, late Bailie of Inverary.
- James Campbell of Rasheilly.
- James Campbell of Rudale.
- Colin Gillespie of Balimore.
- Colin Campbell of Skipnish.
- Duncan Campbell of Glendaroul.
- Colin Campbell of Ederline.
- Niel Campbell of Duntroon.
- Archibald Campbell of Dale, in Craignish.
- Neil Campbell of Dunstaffinish.

The above jurymen were all lawfully sworn, and no objection  
was taken.

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\* The use of the ballot had not been introduced.

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## Evidence for Prosecution.

THE FOLLOWING MINUTE OF ADMISSIONS WAS LODGED ON THE PRISONER'S BEHALF:—

James Stewart pannel does admit the truth of all the writings contained in the inventory of writings subjoined to the criminal letters, and which inventory was delivered to him at executing the said letters against him, excepting two of the said writings which he does not admit, viz., the writing, number 7. intitled Principal holograph letter by Allan Stewart, son to the said James Stewart, addressed to Duncan Stewart of Glenbuckie, dated at Aucharn the 1st of April 1752; and the writing, number 12. intitled, Draught letter by the said James Stewart, and of an instrument of protest at the tenants instance, relative to the said decret of removing and suspension thereof: but the said draught letter and instrument, being again shown to the pannel in court, the pannel admits the truth and authenticity of these also: and therefore admits the truth of the whole writings, except the writing before mentioned, number 7. but does not admit the writings subjoined to the said inventory, being two principal declarations by Allan Stewart, son to the said James Stewart, five principal declarations by Charles Stewart, also son to the said James Stewart, three principal declarations by Margaret Stewart, spouse to the said James Stewart, and two by Elizabeth Stewart, his daughter.

JAMES STEWART. P. GRANT.

## Evidence for Prosecution.

The prosecutors, for proving the criminal libel, called the following witnesses: \*—

MR. ARCHIBALD CAMPBELL OF STONEFIELD, sheriff-depute of the shire of Argyll, aged fifty six years, married, being solemnly sworn, purged of malice, partial counsel, examined and interrogate, and being shown the writings following, viz., four principal declarations by Charles Stewart son to the pannel, bearing to have been emitted in the deponent's presence, and dated the 22d, 23d, and 25th days of May last, and three declarations by Margaret Stewart spouse to the pannel, and two declarations

Archibald  
Campbell

\* In accordance with the custom in use at criminal trials at this time, a synopsis of each witness's statement was officially prepared and authenticated by him, or on his behalf, before he left the witness-box. It was also signed by one of the Judges. These synopses form the only known record of the proceedings at the trial, and are here reproduced in their exact terms.

## James Stewart.

Archibald Campbell by Elizabeth Stewart his daughter, all of them bearing to have been emitted in the deponent's presence, the sheriff of Argyllshire, and dated the 22d and 25th days of May last; depones, That all these declarations were emitted by the respective persons therein mentioned, in presence of the deponent, and of the respective dates therein contained, and were all subscribed by the respective deponents in the deponent's presence, excepting only that the declarations by the said Margaret Stewart and Elizabeth Stewart were not signed by them, but were signed by the deponent for them, because they declared they could not write. And there being also shown to the deponent two declarations by Allan Stewart son to the pannel, bearing to have been emitted in presence of George Douglas sheriff-substitute of Inverness, the 3d of June last, and a declaration bearing to be emitted by the said Charles Stewart son to the pannel, in presence of the said George Douglas sheriff-substitute, dated the 3d of June last, depones, That the deponent was present, and saw and heard the said declarations by the said Allan and Charles Stewarts, emitted in presence of, and taken down in writing by the said sheriff-substitute, and they were, at the sheriff-substitute's desire, dictated by the deponent to the clerk, and the deponent saw the said declarations subscribed by the said Allan and Charles Stewarts respective, of the several dates therein contained, voluntarily and freely, without any compulsion or coercion. *Causa scientiæ patet.* And this is the truth, as he shall answer to God.

ARCH. CAMPBELL. P. GRANT.

### THE FOLLOWING MINUTE WAS LODGED AT THIS STAGE ON BEHALF OF THE ACCUSED:—

After emitting of the above deposition by Mr. Archibald Campbell of Stonefield, to save the time of the court, in bringing further proof of the declarations therein mentioned, the pannel judicially declared, that he admitted the truth of all the several declarations contained in the said oath, that is, that these declarations were emitted by the respective persons therein mentioned, and in presence of the respective judges, and at the respective times therein contained, voluntarily and freely; but does not admit the truth of the facts as declared by the said declarants.

JAMES STEWART. P. GRANT.

Mungo Campbell MUNGO CAMPBELL\* writer in Edinburgh, aged twenty four years, unmarried, sworn, purged and examined *ut supra*, depones, That, in the beginning of May last, the deceas'd Colin

\* See Biographical Notes, p. 325.

## Evidence for Prosecution.

Campbell of Glenure applied to the deponent, to go with him to Lochaber, to assist him in conducting the ejecting of some of the tenants of the estate of Stewart of Ardshiel, and of the tenants of Mamore, part of the estate of Lochiel, over which the said Colin Campbell was factor, and which tenants, he apprehended, would not voluntarily remove, without being legally ejected: that they set out from Edinburgh together, upon the 7th of May last, and arrived at Glenure upon Saturday the 9th of that month: that they set out together for Fort-William upon Monday the 11th about ten o'clock forenoon, and remained at Fort-William till Thursday the 14th, when they returned in order to execute the next day the ejection against some of the tenants of Ardshiel: that, when they came to the ferry of Ballachelish, the defunct waited there about an hour, communing with some of the tenants, and crossed the ferry betwixt four and five in the afternoon: that, after crossing the ferry, Alexander Stewart of Ballachelish, elder, met with the defunct, and they travelled together on foot about the space of half a mile, till they came to the skirt of the wood of Lettermore: that, while they were communing together on foot, the deponent was at some little distance before them on horseback, and the sheriff-officer Donald Kennedy was on foot before the deponent, and Glenure's servant John Mackenzie was on horseback a little before Glenure; and the servant happening to drop a coat, Ballachelish called to him, and the servant returned, and thereby fell behind Glenure and Ballachelish: that Ballachelish parted from Glenure at their entering into the wood of Lettermore, or the wood of Ballachelish, a part of the wood being called by that name; and Glenure mounted his horse, and came up to the deponent: that the deponent asked Glenure, whether Ballachelish had said anything to him touching removing the tenants, and Glenure said, that nothing pass'd betwixt them, on that subject: that, coming to a part of the road that was rough and narrow, so as they could not ride conveniently two horses a-breast, the deponent and Glenure separated, and the deponent went before, and might have been about twice the length of the room where the court now sits before Glenure, when the deponent heard a shot behind him, and heard Glenure several times repeat these words, "Oh! I am dead." Depones, That the deponent thereupon returned to Glenure, and heard him repeat the same words; and thinks, but is not positive, that he added, "Take care of yourself, for he's going to shoot you": that the deponent immediately lighted, and run up the hill from the road to see who had shot Glenure, and saw, at some distance from him, a man, with a short dark-coloured coat, and a gun in his hand, going away from him; and, as the deponent came nearer him, he mended his pace, and disappeared by high ground interjected betwixt him and the deponent; and he was at so great

Mungo  
Campbell

## James Stewart.

Mungo  
Campbell

a distance, that the deponent thinks he could not have known him, tho' he had seen his face: that the deponent thereupon returned to Glenure, and, either at that time, or before the deponent run up the hill as above deponed, (the deponent cannot be positive which) he took Glenure from off his horse. Depones, That, after taking Glenure from his horse, he leaned a little upon the deponent's shoulder, and enclavoured to have opened his breast, to see where the bullets. Herewith he was shot, came out of his body, but was not able, but saw, in his waist-coat, two holes in his belly where the bullets had come out. Depones, That Glenure intended to have been that night at Kintalline, where he expected Mr. Campbell of Ballieveolan was to meet him; wherefore the deponent sent Mackenzie, the servant above mentioned, forward to Kintalline, to acquaint Ballieveolan what had happened, and to bring him to his assistance: that Glenure continued in agonies for about half an hour or a little more, after sending off Mackenzie, and then died; and night coming on, and no appearance of Mackenzie's returning, the deponent sent back the sheriff-officer above named to Ballachelish, to desire Mr. Stewart's assistance, and some of his people: that, in little more than an hour, Ballachelish, and some of his people, with the sheriff-officer came to the deponent's assistance, and carried Glenure's corpse that night to Kintalline, by sea; and, next day, carried it to Glenure, where some surgeons came, and inspected his body; and the deponent saw there the two wounds in his belly made by the balls coming out of his body. Depones, That when the deponent laid Glenure upon the ground, a great deal of blood issued from his body, and his cloaths were all stained with blood, particularly, the small of his back, having been laid on his back upon the ground: that Mackenzie the servant also returned, before they carried the corpse off the ground, and some people with him, particularly Ballieveolan's sons; and, being shown a coat and waist-coat, and a shirt, depones, That these are the coat and vest that Glenure had on when he was murdered; and believes also, it is the same shirt. Depones, That, at the place where Glenure was shot, the wood is pretty thick on both sides, and, on the side from which he was shot, very rugged and stony, and bushes in which the murderer could have easily hid and concealed himself: that the ground there rises up hill towards the south, tho' there are places in it where the murderer might be pretty nearly upon a level with Glenure; and there are also places there so situate as a person standing there might see the most part of the road from the ferry to the wood, and even a part of the road betwixt Fort-William and the ferry: and which place is not a musket shot from the spot where Glenure was murdered. Depones, That, neither the defunct nor the deponent, nor any of their company had any sort of arms with them. Depones, That it

## Evidence for Prosecution.

was betwixt five and six o'clock in the afternoon, as he thinks, when Glenure was murdered as aforesaid; and remembers when Glenure was dying, the deponent look't at his own watch, and found it was then about six o'clock. And depones, That, upon recollection, he cannot be positive whether he observed both the wounds in the defunct's belly, or only one of them. Mungo Campbell

And being interrogate for the pannel, depones, That, some days after the murder, the deponent sent a serjeant and a party of soldiers to the pannel's house at Aucharn, with orders to search, and particularly to search for writings: that the serjeant reported to the deponent, that he had searched and delivered to the deponent one paper which he found there, being a scroll of a letter by the pannel, and of an instrument of protest being the number 12. of the inventory subjoined to the libel, and which is now in the clerk's hands, and being shown to the deponent, depones, That it is the same writing that was delivered to him by the serjeant. Depones, That the serjeant gave him no more papers but that one; and said that he had brought away no more. *Causa scientie patet.* And this is truth as he shall answer to God.

MUNGO CAMPBELL. P. GRANT.

JOHN MACKENZIE, late servant to Glenure, unmarried, aged nineteen years, witness cited, sworn, purged and examined *ut supra*, depones, That, upon the 14th of May last, he came, with his master the deceas'd Colin Campbell of Glenure, from Fort-William, by the horse-road leading to the Ferry of Ballachelish, which road coincides, a little way next to Fort-William, with the new road commonly called the king's road: that they pass'd the ferry of Ballachelish, and came along the high road, which leads to Kintalline thro' the wood of Lettermore: that, coming up with Alexander Stewart elder of Ballachelish, who was on foot, Glenure alighted from his horse to walk a little with Ballachelish, and desired Mungo Campbell writer in Edinburgh, who was in company with Glenure, as also the deponent, to step on; which accordingly they did; but coming up to a place where they were stopt by the tide, they were obliged to alight, and lead their horses across a rock; and, upon that occasion, and by which means it happened that the deponent dropt a great coat belonging to Donald Kennedy sheriff officer, who was also along on foot, and which he had got from him to carry when they passed the ferry of Ballachelish, and Glenure and Ballachelish coming up, and finding the great coat lying on the road, one or other of them cry'd out, to whom this coat belonged? Which the deponent, being within distance to hear, said, It belonged to Donald Kennedy, and that he had been carrying it, and had dropt it; John Mackenzie

## James Stewart.

John  
Mackenzie

whereupon he returned to fetch the coat, by which means Glenure, who had parted with Ballachelish at the rock that has been just mentioned, got before the deponent, and, when about a musket shot before him in the wood of Lettermore, he heard a shot which he took to be from a firelock, which he did not much mind nor know from what quarter it had come, but when he came up he saw Mungo Campbell wringing his hands, and his master lying on the ground with a great deal of blood about him, just breathing, and not able to speak; and Donald Kennedy the sheriff officer was at that time standing by him, and, as near as the deponent could guess, this was about five o'clock in the afternoon. Depones, That Mungo Campbell directed the deponent to ride forward with all speed to Fintalline, and to see if John Campbell of Ballieveolan or his sons were there; and, if they were, to acquaint them what had happened, and to come up immediately; accordingly he went, but found neither Ballieveolan nor his sons there; but being told by one of the tenants at Achindarroch, that probably James Stewart in Aucharn, who is now the pannel, might give him some account of Ballieveolan: that accordingly he went to James Stewart's house in Duror; and James seeing his weeping, asked what the matter was. The deponent told him his master was killed; whereupon James Stewart asked him by whom and how it was done to which he, the deponent, answered, that he did not know by whom, and believed it to be by a shot from a gun or pistol: that the deponent then asked him, what was the nearest road to Glenduror, where he expected to find Ballieveolan which accordingly James Stewart having pointed out to him, he followed; and meeting with one, Allan Dow, whom he had seen several times before, he prevailed with him to go to Glenduror, and acquaint Ballieveolan of what had happened, and to desire him to come up where his master was, and which the said Allan Dow could do more expeditiously on foot, than the deponent could do in that cross-way on horseback; and the deponent immediately returned where his master lay, and brought no person along with him: that his master was then dead, and that the people of Ballachelish were at this time come up, and were standing about him. Depones, That he was then sent off a second time with a horse by the road. Ballieveolan was expected to come, in order to hasten him, and having accordingly met Ballieveolan, he, at Ballieveolan's desire, went and acquainted Captain Campbell younger of Barcaldine of what had happened. Depones, That when his master and he came as has been said, from Fort-William, on the 14th of May last, they met the foresaid John Maccoll going to Fort-William at the foot of the three mile water, which is about three miles from Fort-William: and that the said Maccoll came to the ferry at Ballachelish much about

## Evidence for Prosecution.

the same time with the deponent, but before Glenure who had **John Mackenzie** stayed sometime talking with the tenants of Ballachelish; and further adds, that his master had stayed at Corrychorrachan, which is about five miles from Fort-William, about an hour and a half or two hours. Depones that when Maccoll desired the ferryman to carry him over, the ferryman begged to be excused till Glenure's horses should go over; and that he was then employed in gathering wreck: but Maccoll would not delay; and accordingly was ferried over, as he thinks, about half an hour before Glenure, whose horses were first ferried over, and along with them the sheriff officer, and afterwards Glenure and Mungo Campbell. And depones, That neither Glenure nor any in his company had arms of any sort along with them; and a coat, waistcoat and bloody shirt referred to in the list of evidence being shown to the deponent, depones, That they were the very cloaths and shirt Glenure had on when he was killed as aforesaid. And further depones, That, when he saw the pannel at his house in Aucharn as aforesaid, the pannel wrung his hands, express'd great concern at what had happened, as what might bring innocent people to trouble, and pray'd that innocent people might not be brought to trouble.

And being interrogate for the pannel, depones, That beside that road by which he and his master came from Fort-William to Ballachelish, there is another road by which people travel, both by horseback and on foot, which is computed to be the shortest by a mile, and by which he supposes Maccoll came. *Causa scientiæ patet.* And this is truth as he shall answer to God.

JOHN MACKENZIE.      JA. FERGUSON.

DONALD KENNEDY, sheriff-officer in Inverary, married, aged **Donald Kennedy** forty eight years, witness cited, sworn, purged, and examined *ut supra*, depones, That, upon the 11th day of May last, he was employed by James Campbell writer in Inverary, to carry a packet to Glenure, then at Fort-William, and when he delivered the packet to him, told him, that it contained a warrant for ejecting certain possessors of the lands of Ardshiel: that, upon the 13th day of May, he came to Maryburgh or Fort-William, where he found the decess'd Glenure, and delivered the packet to him, who told him, as James Campbell had before done, what the packet contained; and that he, the deponent, was to be employed in executing the ejection: that, upon the 14th day of May, Glenure, as also the deponent, left Fort-William, and, at Glenure's desire, the deponent went before, being on foot, and waited at the ferry of Ballachelish till Glenure came up to him; that Glenure crossed the ferry from the North to the South of Appin side, and along with him a young gentleman Mungo Campbell, said to be a writer

## James Stewart.

**Donald Kennedy** in Edinburgh, and his own servant John Mackenzie: that Mackenzie and the horses went first over: that the boat again returned and brought over Glenure, Mungo Campbell and the deponent: that the deponent being on foot, as has been said, went on the high road leading to Kintalline, where he understood Glenure intended to quarter that night, but was past on the road by Glenure, Mungo Campbell, and Glenure's servant, whom the deponent could not keep up with; but as Glenure happened to find, upon the road, Alexander Stewart elder of Ballachelish on foot, he lighted from his horse, and walked a little on the way with Ballachelish, whereby the deponent got the start of Glenure, and the two riders that were in company with him, and the deponent walking on thro' the wood of Lettermore, and after he was about half a mile, or so within the wood, he heard a shot, and at the same time heard the aforesaid Mungo Campbell make a great noise as of one weeping, the deponent being at that time but about two penny stone cast before the said Mungo, who was riding foremost, as he afterwards told the deponent; the deponent immediately upon hearing the noise returned, for he had gone a little without minding the shot, till once he heard the noise, and when he came back to Mungo Campbell, Mungo said to him, "The villain has killed my dear uncle," adding, that he had only seen one man; and that he, the deponent, asked no questions, being in confusion, and dreading for the same fate himself. Depones, That he saw Glenure lying upon the ground with great plenty of blood about him, and, as the breast of his waistcoat had been opened before the deponent came up, he saw a hole in his shirt, thro' which he supposed a bullet had come; and that the deponent staid at the place till Glenure expired. Depones, That John Mackenzie, Glenure's servant, was dispatched by Mungo Campbell to the house of Kintalline, where Glenure was to lodge that night, and Ballieveolan along with him, with orders to bring Ballieveolan, and some other gentlemen that were expected to be there; Mungo Campbell also desired the deponent to go for other people, which the deponent at first declined, giving this reason for it, that he would stay and run the same risque with Mungo Campbell, but at last was prevailed upon to go by Mungo Campbell, whom he left alone with the corpse, and the deponent brought Alexander Stewart elder of Ballachelish, and several other people of the town of Ballachelish. Depones, That while Glenure and his company were at the ferry of Ballachelish, as aforesaid, he saw a man who seemed to be in a hurry to get over the ferry, who proved to be John Maccoll, servant to the pannel; to whom Glenure said, in the deponent's hearing, "Sir, you travel better than I do." To which he answered, "I am in a haste," and so went over the ferry about an hour before Glenure past it, who had some business to do with

## Evidence for Prosecution.

tenants there. Depones, That, when the people were gathered about the corpse, as aforesaid, the said John Maccoll was among them. And Mungo Campbell then told the deponent, that when Glenure and he were come three miles from Fort-William, they met the said John Maccoll going to Fort-William, and that he was back at the ferry of Ballachelish, tho' on foot, as soon as they. Depones, That Glenure was shot about half an hour after five in the evening, and died, as he thinks, about six, Mungo Campbell having then looked his watch. Depones, That this John Maccoll was none of the people that this deponent had called upon: that the corpse were carried that night to Kintalline by water, the place where they lay being but a short distance down thro' a rugged part of the road towards the loch.

Donald  
Kennedy

And being interrogate for the pannel, depones, That there are two roads leading from Fort-William to the ferry of Ballachelish, one of them being a horse-road by which Glenure came, the other a foot-road, which is the shortest of the two by about a mile. *Causa scientiæ patet.* And this is the truth, as he shall answer to God. And being further interrogate for the pursuers, depones, That neither Glenure, nor any in his company, had arms along with them of any kind. And being also further interrogate for the pannel, depones, That John Maccoll was at the ferry before Glenure came up. And this is truth, as he shall answer to God.

DANIEL KENNEDY.\* JA. FERGUSON.

JOHN ROY LIVINGSTONE, alias MACANURE, in Ballachelish, married, aged forty, who being sworn by Archibald Campbell sheriff-substitute of Argyllshire, the sworn interpreter, purged of malice and partial counsel, depones, That, upon Thursday the 14th day of May last, he saw Allan Breck Stewart in Ballachelish, in the forenoon, dressed in a dunnish big coat; but had no conversation with him: that, upon the evening of the said day, he saw John Beg Maccoll, servant to the pannel, travelling at a good rate from the ferry of Ballachelish, towards his master's house. The deponent joined him upon the high road, and asked him where he had been; to which John Maccoll replied, that he had been at Maryburgh for Charles Stewart notary-publick, but did not find him at home: that, during this conversation, the deponent travelled the road along with the said John Maccoll, and only stopt for a very short time; and that the said John Maccoll told the deponent, that Glenure that night was to be at Kintalline. Depones, That, about an hour and a half, or two hours thereafter, the deponent went to the wood of Ballachelish, adjoining to

John Roy  
Livingstone

\* The names "Donald" and "Daniel" are still regarded in the Highlands as interchangeable.

## James Stewart.

**John Roy  
Livingstone**

Lettermore, to cut some sticks he wanted: that, while he was in the wood, he saw Donald Kennedy sheriff-officer at Inverary, passing along the high road below him, and a little after him Mungo Campbell, and John Mackenzie, Glenure's servant, and a little after them Glenure on horseback, and Alexander Stewart elder of Ballachelish along with him; and, as the deponent observed Glenure and Ballachelish, they found a big coat upon the high road, and called to the said John Mackenzie the servant, and the servant came back for the big coat, and Glenure and Ballachelish parted: that the deponent came down to the road, and entered into conversation with the said John Mackenzie, and, after a few questions, the said John Mackenzie went on after his master; and immediately thereafter the deponent heard a noise, which he imagined to be a shot, but was not sure. Depo<sup>r</sup>., That, some time thereafter, he went along with Ballachelish to the wood of Lettermore, where he found Glenure dead, and was one of the people that assisted to carry the corpse to Kintalline. *Causa scientia patet.* And this is the truth, as he shall answer to God. And depones he cannot write.

ARCH. CAMPBELL. P. GRANT.

**Alexander  
Campbell**

ALEXANDER CAMPBELL surgeon in Lorn, aged fifty years, unmarried, sworn, purged, and examined *ut supra*, depones, That he was called to the house of Glenure, upon the 15th day of May last, to inspect the body of the then deceas'd Colin Campbell of Glenure, who, the deponent was informed, had been shot the day before; and, having accordingly inspected the body, he found that he had been shot by two bullets entering at his back, one on each side of the back-bone; one of which had come out about half an inch below the navel, and the other about two inches from it, towards the right side. And depones, That they were mortal wounds, of which the deponent believes Glenure died. *Causa scientia patet.* And this is truth, as he shall answer to God.

ALEX. CAMPBELL. JA. FERGUSON.

**Angus  
Macdonald**

ANGUS MACDONALD walk-miller in Auchosragan, married, aged sixty three, witness cited, sworn, purged, and examined *ut supra*, depones, That, in April last, Allan Breck Stewart, and John Stewart in Auchnacooan, came in to the deponent's house, and sat down; and, at the same time, Duncan Campbell the succeeding witness came in, and sat down also; and which Allan asked John Stewart who that was, and John answered, that he was an honest man in the neighbourhood, Duncan Campbell naming him; to which Allan answered, that he did not like any of the sort or name: for that Glenure had wrote to Colonel Crawford, that he had come from France, and to take him up as a deserter; but that he was not in his

## Evidence for Prosecution.

reverence; for he had General Churchill's pass: that John Stewart said, that he did not so much blame Glenure for turning out the possessors of Ardshiel; for that he was but doing the King's service; and that, if he had not the factory, another would, who would do the same thing; to which Allan answered, that he rather the meikle devil had it than Glenure; and, being interrogate for the pannel, depones, That Allan was then dressed in a blue side coat, a red vest, and feathered hat. Depones, that the deponent saw him again about the 8th of May in the same dress: that, at that time, the deponent and the foresaid Duncan Campbell and Malcolm Maccoll were travelling together, and met Allan on the road: that Allan gave Duncan the common salutation; and said, that the last time he had been in Duncan's house, he was bad company, tho' it was not he that was so much the bad company, as the drink. *Causa scientiæ patet.* And this is the truth, as he shall answer to God.

Angus  
Macdonald

ANGUS MACDONALD. P. GRANT.

DUNCAN CAMPBELL, change-keeper at Annat, aged thirty five year, married, witness cited, sworn, purged, and examined *ut supra*, depones, That, in the month of April last, the deponent met with Allan Breck Stewart, with whom he was not before acquainted, and John Stewart in Auchnacoon, at the house of the walk-miller of Auchosragan, and went on with them to the house: that Allan Breck Stewart said, that he hated all the name of Campbell; and the deponent said, he had no reason for doing so: but Allan said, he had very good reason for it: that thereafter they left that house; and, after drinking a dram at another house, came to the deponent's house, where they went in, and drunk some drams, and Allan Breck renewed the former conversation; and the deponent, making the same answer, Allan said, that, if the deponent had any respect for his friends, he would tell them, that if they offered to turn out the possessors of Ardshiel's estate, he would make black cocks of them, before they entered into possession by which the deponent understood shooting them, it being a common phrase in the country: that John Stewart said he did not blame Glenure so much as Ballieveolan for taking these possessions, whereas Glenure was doing the King's service; and Allan Breck replied, that besides that, he had another ground of quarrel against Glenure for his writing to Colonel Crawford, that he, Allan, was come home from France; but that he was too cunning for him; for that, when at Edinburgh, he had made up his peace with General Churchill, and had got his pass, which he had in his pocket-book: that the deponent asked a sight of it: that he searched his pocket-book, but could not find it; upon which he tore a leaf out of the book, and said, there it was. And depones, That he said

Duncan  
Campbell

## James Stewart.

Duncan  
Campbell

twenty times over he would be fit-sides with Glenure, where-ever he met him; and wanted nothing more than to meet him at a convenient place. Depones, That, at this time, Allan Breck was not drunk, for he could walk and talk as well as any man, but it could easily be observed, he had been drinking. *Causa scientiæ patet.* And this is the truth, as he shall answer to God.

DUNCAN CAMPBELL. P. GRANT.

Anne  
MacLaren

ANNE MACLAREN, servitrix to Duncan Campbell change-keeper at Annat, unmarried, aged twenty one, witness cited, sworn, purged and examined by the sworn interpreter above named, depones, That, some time after the 17th day of March last, before the first of May, she saw Allan Breck Stewart in company with John Breck Stewart in Auchnacoon, and Robert Stewart, in the mill of Duror, in her master's house; and that she heard Allan Breck then say, that he would not shun Glenure where-ever he met him, by which she understood that he was to do hurt or harm to Glenure where-ever he saw him. *Causa scientiæ patet.* And this is the truth, as she shall answer to God; and declares she cannot write.

ARCH. CAMPBELL. P. GRANT.

Robert  
Stewart

ROBERT STEWART son to Robert Stewart miller in Cuil, aged about twenty, unmarried, witness cited, sworn, purged, and examined *ut supra*, by the sworn interpreter, depones, That, some time in April last, the deponent was in company with Allan Breck Stewart, John Stewart in Auchnacoon, Duncan Campbell change-keeper in Annat, in the said Duncan Campbell's house: that Allan Breck complained of Colin Roy, meaning Glenure and Mr. Campbell of Ballieveolan; and said particularly of Glenure, that he had sent notice to Fort-William, that he was in the country, that he might be apprehended: but said, he was not in his reverence, as he had the King of France's commission in his pocket; and said, he would be evens with him; and that he would take his opportunity to dispatch or murder either Glenure or Ballieveolan, before he left the country. Depones, That Allan Breck was much in drink at the time of uttering the above expressions; and was then dressed in his long blue coat. *Causa scientiæ patet.* And this is the truth, as he shall answer to God; and declares he cannot write.

ARCH. CAMPBELL. P. GRANT.

Malcolm Bane  
Maccoll

MALCOLM BANE MACCOLL change-keeper at Portnacrosch, aged fifty years, married, witness cited, sworn, purged and examined by the interpreter *ut supra*, depones, That, some time in April last, Allan Breck Stewart and John Stewart in Auchnacoon came to the deponent's house, after nightfall, and sat up all

## Evidence for Prosecution.

night drinking: that, next morning, John Maccoll, then servant to the deponent, now in Shuna, came into the company, in a shabby condition: that Allan Breck asked who he was; that the said John Stewart answered, that he was an honest poor man, with a numerous family of small children; and that it would be great charity in any body to assist him: upon which Allan Breck desired the said John Stewart to give the said John Maccoll a stone of meal, and he would pay for it; which the said John Stewart promised to do: that the said Allan then gave the said John Maccoll a dram, and told him, if he would fetch him the red fox's skin, he would give him what was much better; to which the said John Maccoll answered, that he was no sportsman; and that he was much better skilled in ploughing and delving. Depones, That the deponent gave no great notice to these expressions, at the time; but, after he heard of Glenure's murder, believed he meant Glenure, as he was commonly called Colin Roy, which means Red Colin, in the country. *Causa scientiæ patet.* And this is the truth, as he shall answer to God; and declares he cannot write.

ARCH. CAMPBELL. P. GRANT.

ANNE MACCOLL, spouse to Malcolm Bane Maccoll, the preceding witness, aged about forty, witness cited, sworn, purged, and examined *ut supra*, by the interpreter, depones, conform to the said Malcolm Bane Maccoll, the preceding witness, *in omnibus*, except that the said Allan Breck and John Stewart in Auchnacooan went to bed for a short time; but, whether they slept, or not, the deponent knows not. *Causa scientiæ patet.* And this is the truth, as she shall answer to God; and declares she cannot write.

ARCH. CAMPBELL. P. GRANT.

JOHN STEWART, elder of Fasnacloich,\* aged sixty five years, married, sworn, purged and examined *ut supra*, depones, That, upon the Monday before the murder of Glenure was committed, Allan Breck Stewart was then at the deponent's house, having been three nights there, accompanied by Charles Stewart son to the deponent: that he told Allan Breck, that Glenure was come from Edinburgh, with a warrant to remove the tenants; to which Allan Breck said, that, if there was a warrant, there was no more to be said; but that, if he had no warrant, he would not be allowed to remove them: that the deponent told Allan Breck, that a plea with Glenure, concerning the removing of these tenants would be costly for James Stewart in Aucharn to support: that the reason he named James Stewart, was, that he was the person who acted in behalf of the tenants:

\* See Biographical Notes, p. 328.

## James Stewart.

**John Stewart** that the distance, between the deponent's house and the late Glenure's, is about a mile: that he heard on Sunday, the 10th of May, that Glenure was going to Fort-William; and Allan Breck left his house, about nine o'clock Monday morning. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

JO. STEWART. ARGYLL.

**James Stewart**

**JAMES STEWART** younger of Fasnacloich,\* aged twenty nine years, unmarried, sworn, purged and examined *ut supra*, depones, That Allan Breck Stewart came to Fasnacloich about the 8th of May, and stayed three days: that he went away on Monday the 11th about nine in the morning: that he was going to leave the country soon, but would see them again at Fasnacloich before he went away: that he was then dress'd in a long blue coat, red waistcoat, black breeches, and a feather'd hat: that he saw Allan Breck the next day being Tuesday the twelfth at Ballachelish: that he was then dress'd in a black short coat with round white buttons, and a dark great coat over it, with trowsers on, and a blue bonnet: that the deponent took notice to Allan Breck that he had changed his dress, who answered, that he did it because the day was warm: that the deponent was informed at Ballachelish in company with Allan Breck, that Glenure was gone to Fort-William: that when he parted with Allan Breck at Glenco's house, Allan Breck told the deponent that he was going to Callart, and would return the next day, and did not see him since: that on Sunday the 10th of May, he heard, being in company with Allan Breck, that Glenure had got an order from Edinburgh to remove the tenants, and was gone to Fort-William, and that this was at Fasnacloich. *Causa scientiæ patet.* And this is the truth, as he shall answer to God.

JAMES STEWART. ARGYLL.

**John Stewart** **JOHN STEWART\*** younger of Ballachelish, aged twenty six years, unmarried, sworn, purged and examined *ut supra*, depones, That, upon Tuesday the 12th of May last, he saw Allan Breck Stewart at his father's house of Ballachelish, and heard him ask questions about Glenure's travelling to Lochaber: that, on Thursday the 14th, late at night, Donald Macintyre, a servant of the pannel's, told the deponent of the murder; and that he was going with a message to Appin from James Stewart his master, to give him an account of the murder: that he arrived at Appin's house before the said servant came there: that he returned to Appin's house, instead of going to the pannel's house, where he had intended to be: that he told Appin of the murder, at which he expressed great surprize

\* See Biographical Notes, p. 328.

## Evidence for Prosecution.

and concern. Depones, That, in the time of the Spring John Stewart circuit in this place in May last, he was summoned to be of the jury, but, at the earnest request of the pannel, that he, the deponent, should be present with a notary at the removing of the tenants from the estate of Ardshiel, he was a-going on that errand to the pannel's house, but returned to Appin, upon hearing of the murder committed that day. *Causa scientie patet.* And this is truth, as he shall answer to God.\*

JOHN STEWART. ARGYLL.

KATHARINE MACCOLL, servant to the pannel, aged sixteen years and upwards, who being solemnly sworn, by the forenamed sworn interpreter, purged of malice and partial council, and examined and interrogate, depones, That she saw Allan Breck Stewart at the pannel's house, upon Monday the 11th day of May last, in the afternoon, dressed in a blue side coat, red waistcoat and black breeches: and does not remember to have seen him in any other dress that day. Depones, That the pannel went, in the afternoon of that day, to Keels, to meet Mr. Campbell of Airds, and that it was late at night before he came home; but that the family had not supped when the pannel came home; and that the pannel supped in company with Allan Breck Stewart, Fasnacloich's daughter, and Archibald Cameron, nephew to Fasnacloich, and the pannel's family. Depones, That she saw the said Allan Breck Stewart, on the morning of Tuesday the 12th of May last, dressed in a dunnish-coloured great coat in the pannel's house; and that she saw him go out at the door dressed in the said dunnish-coloured great coat. Depones, That, upon the evening of Friday the 15th of May last, as the deponent came in at the door, Margaret Stewart, spouse to the pannel, being then in the cellar, called upon the deponent, who then saw the said Margaret Stewart put a side blue coat, a red waist-coat, with something else that the deponent did not observe, into a sack, and delivered them to the deponent, desiring her to hide them some way without. Depones, That the said Margaret Stewart did not tell the deponent to whom the cloaths belonged; but that the deponent thought the said coat and waist-coat were Allan Breck's. Depones, That she went away with the said sack, containing the said cloaths; and, as she was going up the brae, in order to hide them, was overtaken by Dugald and John Beg Maccolls, servants to the pannel, who had some guns and swords: and the said Dugald Maccoll asked the deponent, what she had got in the sack, the deponent answered, it was Allan Breck's cloaths; and that she was going to hide them; and that accordingly the said sack, containing the above cloaths, was hid, in the moor, above the

Katharine  
Maccoll

\* This witness was also examined later for the defence.

## James Stewart.

**Katharine  
Maccoll**

pannel's house, by the said Dugald Maccoll, in presence of the deponent. Depones, That, upon Saturday, the 16th of May last, in the evening, the said Mrs. Stewart, spouse to the pannel, desired the deponent to carry back what she had hid, and leave it at the back of the brew-house; which the deponent accordingly did; and has not seen them since. Depones, That Alexander Bane Stewart was seen by the deponent about the house that evening. Depones, That some time in Summer last, after the above period, Solomon Bane Maccoll, servant to the pannel, told the deponent that the said Mrs. Stewart, spouse to the pannel desired her to conceal what she knew about the above cloaths, in case she should be asked or examined about them.

And, being interrogate for the pannel, depones, That Allan Breck Stewart did not lie in the pannel's house upon Monday's night, the 11th day of May last, but lay in the barn, as the deponent thinks. *Causa scientia patet.* And this is the truth, as she shall answer to God; and depones she cannot write.

ARCH. CAMPBELL.    J.A. FERGUSON.

**Archibald  
Cameron**

ARCHIBALD CAMERON, son to Allan Dow Cameron, some time change-keeper in Maryburgh, aged twenty two years, unmarried, sworn, purged and examined *ut supra*, by Mr. Archibald Campbell sheriff-substitute of Argyllshire, depones, being interrogate for the pannel, That, upon Monday the 11th day of May last, the deponent came from Fasnacloich's house to the pannel's house after mid-day: that, some little time after he came there, he saw Allan Breck Stewart there: that the pannel was not at home when the deponent came first there, but came home before night-fall: that the deponent, pannel, Allan Breck, and the family, sat in one room, and supped together: that he did not observe Allan Breck and the pannel speak in private that night: that the deponent, and Allan Stewart the pannel's son, lay in one bed, Allan Breck and Charles Stewart, son to the pannel, in another bed, in the same barn: that, to the best of his remembrance, they all went to bed much about one time, and got up together next morning: that the deponent did not observe the pannel about the house next morning when he got up. *Causa scientia patet.* And this is truth, as he shall answer to God.

ARCHIBALD CAMERON.  
ARCH. CAMPBELL.  
ARGYLL.

**John Breck  
Maccombie**

JOHN BRECK MACCOMBIE, change-keeper at Kintalline, aged about forty, married, witness cited, sworn and purged by the forenamed sworn interpreter, *ut supra*, depones, That, in the beginning of Summer last, before Whitsunday, Duncan Campbell sheriff-substitute of Killin, told the deponent, that if he

## Evidence for Prosecution.

could, with truth and honesty, make any discovery, tending to discover the murderers of Glenure, it was probable he would not be turned out of his possession. Depones, That, upon the 14th day of May last, John Beg Maccoll, servant to the pannel, came to the deponent's house about seven o'clock in the morning, and told, that the pannel had desired the deponent and John More Maccoll, another servant of the pannel's, to ferry the said John Beg Maccoll from his house to Lochaber, that being the shortest road from Aucharn to Fort-William: that the deponent at the first declined it; but upon John Beg's telling, that it was pannel's desire that he should be ferried there, they carried him over accordingly. Depones, That, in the afternoon of the same day, before sun-set, the said John Beg Maccoll came back to the deponent's house and called for a half a mutchkin of aquavitæ, but did not sit down: that, during the drinking of the dram, the deponent asked the said John Beg Maccoll, if he had been at Fort-William and if he had got Charles Stewart notary (which he told in the morning was his errand to Fort-William), John Beg Maccoll answered, that he had been at Maryburgh, but Charles Stewart was not at home. Depones, That, upon Tuesday the 12th of May last, Glenure sent notice to the deponent, that he and some other company was to be at his house upon Thursday then next, and desired that he might be prepared for entertaining them; and that he accordingly made provision for them. Depones, That he told that Glenure was to be at his house that night; and that the whole neighbourhood knew of it; and, upon the pannel's interrogatory, depones, That Glenure frequently went to Lochaber by Mamuckie, being a shorter road to the ferry of Ballachelish than the strath of Appin; and he once coming from Lochaber, landed at Kintalline; and that a person passing from Glencrearan to the ferry of Ballachelish by Mamuckie, does not go through the wood of Lettermore, nor by Kintalline. Depones, That he was warned to remove from his possession, being a part of Ardshiel estate, at Whitsunday last, and employed no person to keep him in possession. Depones, That, some time after he had got his citation of warning, the pannel pass'd by his house on horse-back, and asked if he had his copy of citation in the removing. The deponent answered he had; the pannel called for a sight of it; and, upon the deponent's producing it, the pannel said he would keep it.

And being interrogate if the pannel informed him that he was going to Edinburgh, and was to produce his copy of citation there, depones, not; but only that he was going southward. *Causa scientia patet.* And this is the truth, as he shall answer to God; and declares he cannot write.

ARCHIBALD CAMPBELL. P. GRANT.

## James Stewart.

**Alexander  
Stewart**

ALEXANDER STEWART of Ballachelish elder,\* aged sixty eight years, widower, sworn, purged and examined *ut supra*, depones, That Allan Breck Stewart called at the deponent's house upon the 12th of May last, and that James Stewart younger of Fasnacloich was then at the deponent's house: that, upon the 13th, about seven or eight afternoon, he came again to the deponent's house, and lodged with him all night, stayed the next day, being Thursday the 14th, till eleven or twelve, when he went out with a fishing-rod in his hand, and was fishing in the burn near the deponent's house, but he did not see him take any: that he did not take leave of the deponent; and did not return; and he knows nothing of him since: that the said Allan Breck Stewart was dress'd in a great coat, and under it a short black coat with white buttons: that, when the said Allan Breck Stewart was fishing, he saw a great coat lying upon the bank which he took to be Allan Breck Stewart's: that, that evening on the 14th he was in company with Glenure, and left him very near the wood of Lettermore: that, the morning after the murder was committed, the deponent really thought, that Allan Breck Stewart might be the actor in this murder, because he did not return to this deponent again. *Causa scientia patet.* And this is truth, as he shall answer to God.†

ALEX. STEWART. ARGYLL.

**Donald  
Rankine**

DONALD RANKINE herd to Ballachelish, unmarried, aged about eighteen, witness cited, sworn, purged and examined *ut supra*, by the said Archibald Campbell sworn interpreter, depones, That, on the 14th day of May last, he saw Allan Breck Stewart at the house of Ballachelish his master: and that the said Allan Breck was dress'd in a great dun coat, under which he had on a black short coat with silver or white buttons on it: that before mid-day he went up with a fishing-rod to the water side, where he saw him fishing up the water: that he has not seen him since. *Causa scientia patet.* And this is truth, as he shall answer to God: and declares he cannot write.

ARCH. CAMPBELL. P. GRANT.

**Archibald  
Macinnes**

ARCHIBALD MACINNES ferryman at Ballachelish, witness cited, aged sixty five years, married, sworn, purged and examined *ut supra*, depones, That he met Allan Breck Stewart, near the ferry of Ballachelish, upon the evening of Wednesday the 13th of May last, as the said Allan returned from Glenco. Depones, That, after mid-day, upon Thursday the 14th day of May last, as the deponent was sitting near the ferry of Ballachelish with the son of John Campbell in Stronmellachan

\* See Biographical Notes, p. 327.

† At a later stage Mr. Stewart gave evidence for the defence.

## Evidence for Prosecution.

in Glenorchie, Allan Breck came behind them and hoisted, and, upon the deponent's looking about, desired him to come to him; which the deponent did; and the said Allan inquired of him, if Glenure had cross'd the ferry from Lochaber to Appin? the deponent told him, he was sure he did not: that, upon this, Allan Breck went away towards the high-road; had on a dun-coloured big coat, and had no fishing rod; and the deponent has not seen him since. Depones, That he is ferryer upon the Appin side where this conversation happened. *Causa scientiæ patet.* And this is the truth, as he shall answer to God; and declares he cannot write. And further depones, that he heard no body suspected for the murder of Glenure, but the said Allan Breck. Depones, That Glenure was expected back upon the Wednesday; and the deponent was sure he must be back the Thursday, as it was currently reported in the country, he was to have a meeting with some gentlemen at Kintalline, Thursday night. And this is also truth, as he shall answer to God.

Archibald  
Macinnes

ARCH. CAMPBELL. P. GRANT.

DONALD STEWART\* in Ballachelish, aged about thirty, married, solemnly sworn by Archibald Campbell writer in Inverary, sworn interpreter, who being purged of malice and partial council, examined and interrogate, depones, That, upon the 15th day of May last, he met the pannel in Duror, upon the marches of Auchindarroch, opposite to the pannel's house. Upon the deponent's regretting that such an accident as Glenure's murder should happen in the country, the pannel joined with him, and said that he was informed that one serjeant More, *alias* John Cameron, had been threatening harm to Glenure in France, but did not inform the deponent who told him so. Depones, That, to his knowledge, Serjeant More† has not been in Appin these ten years past. Depones, That, upon the evening of Thursday the 14th of May last, about night-fall, Katharine Macinish, then in Ballachelish, now in Larich, came to the deponent, and told him that one without wanted to speak with him: that this message came to him in Ballachelish's own house: that, when he went out, the said Katharine Macinish informed him, that it was Allan Breck that wanted him; and that he was a little above the house in the brae: that the deponent went up the brae, and met Allan Breck, who was then dressed in a great coat, and a dark short coat under it with white metal buttons: the deponent told him of the murder, and said it could not be but that he, Allan Breck, was about it; to which Allan Breck answered, that he heard of the murder, but had no hand in it; to which the

Donald  
Stewart

\* This witness was "out" during the '45 and was wounded at Culloden.

† See Biographical Notes, p. 326.

## James Stewart.

**Donald Stewart** deponent replied, he did not believe him. Depones, That the said Allan Breck Stewart told the deponent, he was going immediately to leave the kingdom, was very scarce of money, and was going then for Koalisnacoan; and desired the deponent to acquaint the pannel, that he was gone to Koalisnacoan; and desired him, if possible, to send him money there; and the deponent then promised to acquaint James Stewart of the above message. Depones, That the said Allan Breck said, he believed he would be suspected of the murder, and upon that account, and as he was a deserter formerly from the army, it was necessary for him to leave the kingdom. Depones, That, before he had the above conversation with Allan Breck, he assisted in carrying the corpse of Glenure to the boat. Depones, That, after the conversation with the pannel about Serjeant More, he delivered the above message from Allan Breck to the pannel; and that the pannel did not say whether he was to send the money or not: that this conversation happened about 10 o'clock in the forenoon of Friday the 15th of May last; and that there was no body present. Depones, That, upon Sunday the 17th of May last, he met Alexander Bane Stewart packman in Appin, near the houses of Larich in Glenco, who told the deponent, that he had been at John Breck Maccoll bouman to Appin in Koalisnacoan, with either three or five guineas, the deponent is not positive which, that he had got at Aucharn, to be left with the said John Breck for the said Allan Breck's use, if he called there; and told the deponent, that he left the money with the said John Breck Maccoll, but did not see the said Allan Breck.

And, upon an interrogatory put for the pannel, depones, That, upon the deponent's delivering the above message from Allan Breck to the pannel, the pannel asked why Allan Breck himself did not come for money if he wanted it; to which the deponent, to the best of his remembrance, replied, that Allan told him he would be suspected for the murder, and was a deserter: to which the pannel answered, that he hoped in God Allan Breck was not guilty of the murder. Depones, That, during the above conversation with the pannel, Alexander Stewart, Duncan Maccombich and several other possessors of Auchindarroch, were in the adjoining field delving, but at such a distance that the deponent cannot think they could hear the above conversation. And, being shown the short black coat, with clear white buttons on the breast and pockets, and the blue stripped trowzers, now lying in the clerk's hands, depones, That the said Allan Breck wore such a coat and trowzers, upon Thursday the 14th of May last; and saw him in it the forenoon of that day at Ballachelish. And further depones, That he, the deponent, is married to a daughter of Stewart of Ballachelish, and stays in the house with him: that her mother was daughter

## Evidence for Prosecution.

to Stewart of Annat in Perthshire. *Causa scientiæ patet.* Donald Stewart  
And this the truth, as he shall answer to God; and depones he cannot write.  
ARCH. CAMPBELL. P. GRANT.

JOHN MACDONALD of Glenco, aged twenty six years, unmarried, John Macdonald  
sworn, purged and examined *ut supra*, depones, That, on the 12th of May last, Allan Breck Stewart came to Carnock, the house of the deponent: that he staid there but a very little time viz. not above a quarter of an hour: that the deponent had no conversation with him; and the said Allan Breck Stewart went away: that on Friday, the 15th of May last, the said Allan Breck Stewart came again to the said house at three or four o'clock in the morning, and knocked at the window of the said house, when the family were all in bed: that the deponent went to the door of his house, and there saw Allan Breck Stewart, who gave him the first notice he had of Glenure's being murdered the evening before in the wood of Lettermore; and told him, that he was to leave the country; and came to take leave of the deponent and his stepmother, who is a sister of Ardshiel's: that his cloaths were then a dun or brown great jocky coat: that the deponent did not ask Allan Breck Stewart any questions about the said murder; nor did he say any thing upon the subject to Allan Breck Stewart, as far as the deponent can remember: Allan Breck Stewart told him he was to go the moor-road leading to Rannoch: that, upon the Tuesday above mentioned, James Stewart of Fasnacloich was along with the said Allan Breck Stewart; and that he was dressed in a black short coat with white buttons. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

JOHN MACDONALD. ARGYLL.

ISOBEL STEWART, relict of Alexander Macdonald of Glenco, aged Isobel Stewart or Macdonald  
forty two years, sworn, purged, and examined *ut supra*, depones, That, upon Tuesday, the 12th day of May last, Allan Breck Stewart, described in the libel, came to her house at Carnock, in the afternoon, accompanied by young Fasnacloich, dressed in a black short coat with white clear buttons: that he staid about an hour; and then went away to the deponent's sister's house at Callart: that Allan Breck Stewart came again to the deponent's house on the Wednesday the 13th of May last, in the afternoon and staid about a quarter of an hour; and then went to Ballachelish: that, on Friday, the 15th of May, the said Allan Breck Stewart came again to the said house, at four o'clock in the morning, and knocked at the window of the house, and all the family was in bed; upon which the deponent went out with her step-son; and she asked him, "What news up the country?" to which he answered, a good deal of news, that Glenure was killed the evening before in the

## James Stewart.

**Isobel  
Stewart or  
Macdonald**

wood of Lettermore: that he was come to take farewell of the deponent; for he was to leave the country: that she asked him no more questions about the murder: that she asked him to come into the house; but he answered he would not stay: that, to the best of her remembrance, Allan Breck Stewart told her, that Glenure was killed or shot: that, when he knocked at the window, one of the deponent's children told her, that he heard Allan Breck Stewart's voice. *Causa scientiæ patet.* And this is truth, as she shall answer to God.

ISOBEL STEWART. ARGYLL.

**Mary  
Macdonald  
or Macinnes**

MARY MACDONALD, spouse to Donald Macinnes in Leckintium, aged about forty, witness cited, solemnly sworn by Archibald Campbell of Knockbuy, sworn interpreter, purged of malice and partial council, examined and interrogate, depones, That, a little before sun-setting, on Sunday the 17th of May last, she saw Allan Breck Stewart sitting in the wood of Koalisnacoan, less than a mile's distance from the houses: that, upon her approach, he started to his feet: that she gave and received the common salutation from him; and then she passed away on her own business: that he was dressed in a long dun jocky coat and bonnet. And depones, she was alarmed at meeting a man in a place so remote. *Causa scientiæ patet.* And this the truth, as she shall answer to God; and declares she cannot write

ARCH. CAMPBELL. P. GRANT.

**Duncan  
Stewart**

DUNCAN STEWART travelling packman in Arlarich in Rannoch, aged thirty two years, married, sworn, purged, and examined *ut supra*, depones, That he met with Allan Breck Stewart upon a Monday or Tuesday about the 18th or 20th of May last, at a place in Rannoch called Leckinstrensmeir; and, having asked Allan whence he had come, and whether he was going he answered, he had come from Ballachelish or Callart, he does not remember which; and that he was going to a shealing, where his uncle Allan Cameron lived; and, as the deponent had, at that time, heard nothing of the murder of Glenure he said nothing to him about it: that, two or three days thereafter, the deponent's sister told him, there were two gentlemen wanting him out-by: and, after he had got his breakfast, he went out, and first saw Allan Breck, and afterwards Allan Breck and Allan Cameron together at a know; and that, how soon the deponent went up to the two, Allan Cameron went back, and the deponent proceeded with Allan Breck down the country, about six miles, where he had occasion to be going about his own business; and parted with him at a place called Inching: and, after he parted with the said Allan Breck, he was apprehended by a gentleman called Alexander Campbell, who supposed the deponent to be Allan Breck Stewart; and, having asked the deponent, if he had seen Allan Breck

## Evidence for Prosecution.

he then denied having seen him. Depones, That Allan Breck Duncan  
Stewart was, at this time, dressed in a long blue coat and blue bonnet. *Causa scientiæ patet.* And this is truth, as he shall answer to God; and depones he cannot write. JA. FERGUSON.

ALLAN OIG CAMERON in Arlarich in Rannoch, aged thirty Allan Oig  
Cameron eight, widower, sworn, purged, and examined *ut supra*, depones, That, on a Monday, he thinks the 18th of May last, Allan Breck Stewart, the deponent's nephew, came to the deponent's house in Rannoch, who, having told the deponent, he had come from Appin or Glenco, the deponent, who, by that time, had heard a rumour of Glenure's murder, said to the said Allan that he doubted not, he might be suspected of it, as he was a loose idle man in the country; to which the said Allan answered, that he made no doubt himself that he would be suspected of it: and the deponent, having pressed him earnestly to make a clean breast, and tell him all he knew of the matter, declared with an oath, he had never seen Glenure, dead or alive; and the said Allan having staid with the deponent till the Wednesday thereafter, the deponent frequently repeated his instances, to tell him what he knew of the murder; at which Allan Breck became angry; and the deponent desisted further inquiry: that the said Allan Breck left the deponent's house upon the Wednesday, whom the deponent conveyed little more than two gun-shots from his own house; but Duncan Stewart chapman, the preceeding witness, who had come to the deponent's house that morning, went along with them; and he saw them take a little bye-road through corn, which might have led them to the high road; but what road they afterwards took, he does not know: and depones, That, at this time, Allan Breck Stewart was dressed in a big coat of a brownish colour, and had under it a long blue coat lined with red, red waist-coat and a bonnet: that, upon the 24th of May, as the deponent thinks, having occasion to go to his master Sir Robert Menzies, when about fourteen miles from his own house, and, at the side of a wood, he heard a whistle from the wood, and, looking about, saw it to be the said Allan Breck; and the conversation he then had with him, was to the following purpose: that Allan Breck, having told him, his only fear was to be apprehended by the military, which might prove very fatal to him, as he had been a deserter; which led the deponent to say, that he was very sure, the friends of the deceas'd would procure him his discharge, if he could discover the murderer; to which Breck answered, that they were, at this time, in such fury and rage, he was very sure, were he apprehended, he would be hanged. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

ALLAN CAMERON.

JA. FERGUSON.

## James Stewart.

**James Man** **JAMES MAN** change-keeper at Innerhadden, aged thirty two, married, sworn, purged, and examined *ut supra*, by the above Mr. Archibald Campbell of Stonefield, sworn interpreter, depones, That, Allan Breck Stewart came to the door of the deponent's house at Innerhadden, the lower part of Kannoeh, about twilight, towards the end of May last, and asked the deponent, who was then standing at his own door, if that was his house, which the deponent answered it was; and then Allan Breck told him, that he was directed by John Stewart in Bohallie to come there for some supply of provisions: that the deponent desired him to come into his house, and that he would give him part of such fare as he had; but that Allan Breck declined to come in, being in a hurry, and stood in need of some provision; whereupon the deponent brought him some bread and cheese, and after he gave him the same, conveyed him as far as his barn, where the said Allan Breck desired the deponent to return; and that he, the said Allan Breck, intended to go farther down the country that night: that the said Allan Breck was dressed in a great dun coat and bonnet, and short hose; what cloaths he had under the great coat he did not see; that he saw a holster under his left arm: that he asked him whence he had come, but he did not tell him. Depones, That before Allan Breck came, as aforesaid, it was reported in that country, that he was concerned in Glenure's murder; and that he himself suspected him at the time, as he came unseasonably, and was wanting provisions. *Causa scientia patet.* And this is truth, as he shall answer to God. And further depones, That he has been acquainted with Allan Breck these twelve years. And this is also truth, as he shall answer to God.

**JAMES MAN.**  
**ARCH. CAMPBELL.**  
**JA. FERGUSON.**

**Lieut.-Col. Crawfurd** **JOHN CRAWFURD** Esq; Lieutenant-Colonel of General Pultney's regiment of foot, aged thirty years, unmarried, sworn, purged, and examined *ut supra*, depones, That he knows the paper now put in his hands, being number 11. of the inventory of writings in the clerk's hands: that it was sent open to him before it was sent away. Being asked, whether the deponent had any preceeding conversation with the pannel on the subject of this letter, he answers, he does not remember he had any. Depones, and being asked, whether the deceas'd Colin Campbell of Glenure ever told the deponent, that Allan Breck Stewart was a deserter, and in this country the deponent answers *negativé*. *Causa scientia patet.* And this is truth, as he shall answer to God.

**JOHN CRAWFURD.** **ARGYLL.**

## Evidence for Prosecution.

ALEXANDER STEWART of Innermahyle,\* aged forty four years, married, sworn, purged, and examined *ut supra*, depones, That the pannel was a great many years ago tenant to his brother Ardshiel, in the farm of Glenduror, and was removed also several years ago, the deponent does not remember how many, by his brother: that he again became tenant in the same lands in the 1749, or perhaps 1748, and was again removed by the deceas'd Glenure the factor, at Whitsunday, 1751, and the lands set to Mr. Campbell of Ballieveolan. Depones, That, as the pannel is the deponent's near neighbour, the deponent had frequent opportunities of conversing with him, touching his said removal: that the pannel did not expect to have been removed, and seemed dissatisfied that he was; and said, he believed Glenure would not have removed him, if Ballieveolan had not sought these lands from him. Depones, That the pannel further said, that the tenants generally allowed some gratuity to Ardshiel's children; and that these lands were the best farms on the estate, and most of the benefits accreased from them; and tho' he himself could be provided of a farm elsewhere, yet the children would be deprived of that benefit. Depones, That, about the end of April, or beginning of May last, the deponent thinks about the beginning of May, he casually met on the high-way with Allan Breck Stewart, and quarrelled him for not making him, the deponent, a visit, and Allan Breck Stewart promised to see the deponent before he left the country; but the deponent has never seen him since that time. Depones, That, upon the Saturday and Sunday after Glenure's murder, it was the general opinion of the people in the country, that he had been murdered by Allan Breck Stewart. Depones, That the place where Glenure was said to be murdered, and where the deponent observed marks and symptoms of the murder, is a very bad road thro' a wood, interspersed with rocks and stones upon a hanging brae, from which a person may descry the road on the North side of the ferry of Ballachelish, and where a person may easily conceal himself so as not to be seen from the road. Depones, That the deponent is acquainted with the hand-writing of Allan Stewart, son to the pannel, and has frequently seen him write. And being shown a letter† signed Allan Stewart, and addressed to Duncan Stewart of Glenbuckie, dated at Aucharn the 1st of April 1751, being the writing number 7. in the inventory of writings subjoined to the libel, depones, That it is like Allan Stewart's hand-writing, and the deponent would take it to be his, but cannot be positive that it is his. Depones, That, after the attainder of Stewart of Ardshiel, the factor gave the pannel the opportunity of having the greatest influence with

Alexander  
Stewart

\* See Biographical Notes, p. 327.

† See p. 208, and relative footnote.

## James Stewart.

**Alexander Stewart** the tenants of Ardshiel more than any other person by allowing the pannel to set the lands, which he continued down to Whitsunday 1751, if not at that term also; but depones, That the pannel's connexion with the family of Ardshiel gave him also a natural influence over the tenants, even before Glenure's factory. Depones, That, before that time, the tenants, the deponent believes, paid their rent to the lady of Ardshiel, and she again employed the pannel to deal with them.

And being interrogate for the pannel, whether he, the pannel, removed voluntarily from Glenduror without any warning, depones, That he did not hear of any warning, but that he removed voluntarily. Depones, That Allan Breck Stewart, as the deponent has been informed, was a soldier in the King's army, and was taken prisoner by the rebels at the battle of Preston;\* and that he was told so by a man who took him from among the prisoners. And depones, That he afterwards joined with the rebels, where the deponent saw him. Depones, That, after the battle of Culloden, he left this country, and, as he told the deponent, went over to France, and entered into the French King's service. Depones, That the deponent had no occasion of seeing Allan Breck Stewart last time he was in the country, but at the time before deponed upon, and one time before that; and both these times he was dressed in a blue long coat, a red vest, and a feathered hat, and black breeches. Depones, That he remembers that Allan Breck Stewart came over to this country a year or two ago, and staid some weeks among his friends; but neither at that time, nor the last time, did he seem, so far as the deponent observed, to be in any apprehension of being taken; only, as he had been once in the army, he did not chuse to meet with any of the King's troops. Depones, That, at the time the pannel removed from Glenduror, he told the deponent, that he had had a meeting with Ballieveolan; and that there was a compromise betwixt them, but does not remember the particulars. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

ALEX. STEWART. P. GRANT.

**Donald Campbell**

DONALD CAMPBELL of Airds, aged forty seven years, married, sworn, purged and examined *ut supra*, depones, That the pannel was employed by the deceas'd Glenure for some time as his sub-factor in levying the rents of Ardshiel, and setting the lands; and the pannel told the deponent, that whatever was made of these rents over what was paid in to the exchequer, was accounted for to the children of Ardshiel: and when he

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\* This, of course, refers to the battle of Prestonpans, fought on 21st September, 1745. The name "Preston" was often used to describe it, thereby causing a chance of confusing it with the fight at Preston in Lancashire during the former Rebellion.

## Evidence for Prosecution.

removed from Glenduror, he told the deponent that he had Donald  
Campbell reason to believe, that the said excrement of the rents of that farm would still be accounted for to them; and, in that case, he would be easy as to his own removal. And depones, That Ardshiel's children, at the time of the rebellion, were all young; his eldest son being now, as the deponent believes, about eighteen. Depones, That, in Spring last, the deponent had a letter from Colonel Crawford, telling him that he heard Allan Breck Stewart was come to the country, and inlisting men for the French King's service, and desired the deponent to inquire if it was so: that the deponent did inquire, and wrote the colonel for answer, that he heard he had been in the country, but that he was then gone away: that this was in the month of April, to the best of the deponent's remembrance; and it seems about that time Allan Breck Stewart had gone to Rannoch, which gave occasion to the deponent's being informed that he was gone away; and did not hear of his having returned to the country till after Glenure's murder; and thinks he wrote also to Colonel Crawford, according to the information he had got, that Allan Breck Stewart was in use of coming every year to the country since Ardshiel went to France. Depones, That, upon the afternoon of Monday the 11th of May last, the deponent sent to the pannel, desiring him to come to him to Keills, a farm belonging to the deponent, at about a mile's distance from the pannel's house: that the pannel accordingly came there to him that afternoon as soon as he expected him: that the deponent's business with him was for his assistance in setting that farm: that the farm was accordingly set; and the pannel himself took part of it; and conveyed the deponent a part of his way home; and then they parted: that before parting he desired the pannel to go next morning to Appin's house: that the pannel accordingly did so; and the deponent had a letter from him, from that place. *Causa scientia patet.* And this is truth, as he shall answer to God.\*

DONALD CAMPBELL. P. GRANT.

CHARLES STEWART† writer and notar at Bannavie, aged thirty Charles  
Stewart eight years, married, sworn, purged and examined *ut supra*, depones, That James Stewart the pannel wrote a letter‡ to the deponent, desiring him to go with the tenants of the lands of Ardshiel to intimate to Glenure a sist on a bill of suspension: that accordingly the deponent went to Aucharn that night: and the next morning the tenants came there; and he then

\* The author of the "Supplement" states that Mr. Miller, one of Stewart's counsel, here wished to prove the good character of his client from the mouth of this Campbell witness, and that the Duke stated his opinion that no one who had been in rebellion could be of good character.

† See Biographical Notes, p. 328.

‡ See p. 210.

## James Stewart.

**Charles Stewart** went along with the tenants to Glenure's house; and there intimated the sist; and a protest was also taken against the said Glenure: that this was on the 1st of May. Depones, That the pannel told the tenants at the pannel's house, that there was a sist come of the removing; that he did not desire them to go with the sist, unless they had a mind themselves; and they chose to go, but the pannel himself did not go along. Depones, That he received a second letter\* from the pannel of date the 14th of May, desiring him to attend next day at the ejection; but that he declined the same, because he did not care to disoblige Glenure. Depones, That he saw Allan Breck Stewart at Aucharn the 1st of May; and when the deponent left Aucharn next day, he left him there: that he heard Allan Breck say, that he thought it hard that Glenure should remove the tenants upon the estate of Ardshiel when he did not remove those of Mamore. Depones, That, in the beginning of April having met Allan Breck Stewart, he told the deponent, that he heard that Colonel Crawford was endeavouring to take him up as a deserter; but that he, Allan Breck, had surrendered himself in the 1746 to Sir Robert Menzies, as a justice of peace. Depones, That, in the beginning of April, the deponent saw Allan Breck Stewart at Callart: that he did not appear to be sculking: that when he saw him first, he was dressed in a French habit: that, on the 1st day of May when he saw him at Aucharn, he was in a short black highland coat with white buttons and trowsers, and said he had come from Rannoch. *Causa scientie patet.* And this is truth, as he shall answer to God

CHARLES STEWART. ARGYLL.

**Duncan Maccoll**

**DUNCAN MACCOLL** in Ardshiel, aged thirty years and upwards, married, being sworn, purged and examined *ut supra*, by Mr. Alexander Campbell minister at Inverary, sworn interpreter, depones, That, on his and others being warned to remove from the lands of Ardshiel, as at Whitsunday last, he, for his part, had no intention other than to submit to the warning, till a paper was procured from Edinburgh, which he heard read by Charles Stewart notar at Aucharn, as on a day he was there, being along with his neighbours advertised to meet there: that, when the notice was given for this meeting, he was not at his own house; but, on his return, his wife told him, such a message was sent, and that advice was come from Edinburgh to direct those who were warned to remove, to continue in their possession: that, on his coming to Aucharn, he does not remember, whether the paper was read in his presence, but is positive he and his neighbours were told by Charles Stewart notar and the pannel, that the paper contained advice, as above, on which they should go to ask the

\* See p. 210.

## Evidence for Prosecution.

lands from Glenure; and to be cautious in their conduct, as they were to swear about their being faithful and peaceable tenants. Depones, That he gave no allowance or mandate to the pannel to make any application at Edinburgh against the removing: that, before he heard any thing of this paper from Edinburgh, he had engaged to serve as bouman to the tenants Glenure was to introduce; but that, in hearing of the paper from Edinburgh, he preferred keeping by his neighbours, as he considered the being continued in possession, did the law support him in it, more beneficial to him. Depones, That the procuring the paper at Edinburgh cost him no money. *Causa scientia patet.* And this is truth, as he shall answer to God. Duncan Maccoll

And, being interrogate for the pannel, depones, That it was in company with the rest of his neighbours, he went to Aucharn, and went along with them likewise in company from Aucharn to Glenure, along with the notar; and that he remembers, before they left Aucharn, the pannel, in general, told them, they might follow the advice given them, or not, as they should see cause; and that, upon their arrival at Glenure, all that he remembers was, that they took protests with money, in the notar's hands, against Glenure. And this is also truth, as he shall answer to God.

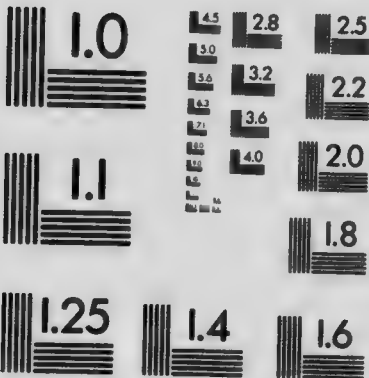
ALEX. CAMPBELL.      JA. FERGUSON.

JOHN MACCOMBIE in Ardshiel, aged forty three years, John married, sworn, purged and examined *ut supra*, by the above Maccombie Mr. Alexander Campbell sworn interpreter, depones, That he was warned with the rest of the tenants to remove, as at last Whitsunday, and meant to submit to it, and therefore agreed with the tenants to be introduced to serve them as bouman; but on his being called to Aucharn, by a message in Charles Stewart the notary's name, and hearing the advice from Edinburgh explained there, and that there were some hopes the government would allow them to sit still, if they continued peaceable, he chused to keep by this chance with his neighbours; upon which he went along with them to Glenure, and asked to be continued, and got for answer, that the application was too late, the lands being set to others; upon which he joined with his neighbours in taking a protest in the hands of the notary. Depones, That, as to the agreement betwixt him and the incoming tenants, when he undertook to be their bouman, he heard both Glenure and these tenants say, that it was by Glenure's advice that this was done. Depones, That, as Duncan Maccoll and he agreed at the same time to be bouman to the incoming tenants, so he heard Glenure say, that it was his advice to the person who was to employ Duncan Maccoll, to take him as his bouman. Depones, That, on his being warned, he advised with the pannel how to



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## James Stewart.

John  
Maccomblesh

behave: that he did not pretend to direct: that an advice in law should be asked: that he hoped the King and those employed by him, would continue the former possessors, they behaving dutifully; and that, on his being advised by the pannel to have patience, he resolved to wait the issue: that likewise the pannel advised him, if better could not be made of it, to endeavour to get a subset from the incoming tenant; and that the pannel advised him and others concerned, to qualify to the government. Depones, That he told the pannel, that if the law countenanced the continuing them in their possession, he would rather chuse it. Depones, That, on the day he and his neighbours went to Glenure, the pannel left them to the freedom of their own choice, whether to follow the purpose of the advice from Edinburgh, or not; only it was his opinion, that they had a chance of being continued in their possessions, they behaving themselves in all respects dutifully, and go and ask the lands of Glenure. Depones, That he does not remember that the advice from Edinburgh cost him any money, or that any was asked of him; but that some accompts were at that time betwixt him and the pannel. Depones, That he continued with the rest of the tenants about the pannel until they were desired by him to leave him, as he could take care of himself, and was to go home; and that he does not remember to have heard Glenure's name mentioned all the while; and that this happened on occasion of Glenure and the pannel's meeting at Kintalline: that he is not positive as to the time, but thinks it was the last night of the old year. Depones, That he heard Glenure went next day to the pannel's house, and dined there. *Causa scientie patet.* And this is truth, as he shall answer to God.

ALEX. CAMPBELL. P. GRANT.

John  
Maccorquodale

JOHN MACCORQUODALE, late in Lettermore, now in Ballachelish, aged twenty and upwards, married, sworn, purged, and examined *ut supra*, by the said Mr. Alexander Campbell sworn interpreter, depones, That the last night of December last, he was present at Kintalline, as Glenure and the pannel, with some other company, met, when, after drinking a while, from loud words it was apprehended a quarrel would ensue; to prevent which the deponent, with some others, carried out the pannel, who seemed unwilling to part with Glenure, as he expected Glenure would go that night to his house: that the deponent heard that Glenure, tho' he declined to go with the pannel that night, yet he proposed to breakfast with him next morning: that the deponent was in company with the pannel, and followed him at some distance from the house of Kintalline; and that all the while he was in the pannel's company, he heard nothing of Glenure; only the pannel was disoblged at being separated from him, and said, that if they about him

## Evidence for Prosecution.

had kept off, Glenure and he would be good friends before they would part. Depones, That, when he was warned, and consequently like to want lands, he was talking of his situation to the pannel, being poor, and, in his own apprehension, unable to bear the expence of a law-suit, did not propose to follow the matter in that way: that being asked a sight of the warning, he gave it to the pannel, but did not desire any advice in law should be asked about it, having some dependence on his innocence, and not being concerned in any of the troubles in that country.

And being interrogate for the pannel, whether the pannel had advised him, the deponent, to engage as bouman in Lettermore, if better could not be provided for him, depones *negativé*. *Causa scientiæ patet*. And this is truth, as he shall answer to God.

ALEX. CAMPBELL. P. GRANT.

EWAN MACINTYRE in Duchelly, late herd in Glenduror, aged twenty years and upwards, unmarried, sworn, purged, and examined *ut supra*, by Mr. Archibald Campbell of Stonefield, sworn interpreter, depones, That he engaged to be herd to Mr. Campbell of Ballieveolan, in the farm of Glenduror for the year 1751; and that the day after he entered into his service there, the pannel challenged him for accepting thereof, and told him, that he would be fit-sides with him, sooner or later, for doing it; and that if he did not meet with resentment himself in his lifetime, others, such as his friends, might meet with it after his death. Depones, He never was in the pannel's service. *Causa scientiæ patet*. And this is truth, as he shall answer to God. And depones he cannot write.

ARCH. CAMPBELL. ARGYLL.

ALEXANDER CAMPBELL in Teynaluib, aged fifty years, married, sworn, purged, and examined *ut supra*, depones, That, in the end of April last, the pannel called at the deponent's house in the morning, to have his horse corn'd; and having called for, and got a dram, which was afterwards set down upon the table, one Macclaren a merchant in Stirling, who had lodged with the deponent the night before, being present, asked the pannel, if he would not help the deponent to a dram. And the pannel answered, he did not know any thing that he would help the deponent, or any of his name to, if it was not to the gibbet. The deponent answered, that that was not a comfortable expression to him, that it seems if any of them were at the gibbet, the pannel would draw down their feet; and the pannel replied, that of some of them he would, and some of them he would not: that then the deponent said, that Glenure, as he supposed, was the man of the name with whom the pannel had the greatest quarrel, and the deponent did not know any good cause the pannel had for it: upon which the

## James Stewart.

Alexander  
Campbell

pannel answered, that if Glenure had used the deponent as ill as he had used him, the pannel, by turning him out of his possession, he would have no less quarrel with him than he had. And the deponent replied, that that was no just cause of quarrel; for that if the pannel had a tack of his farm, Glenure could not turn him out; and the deponent's wife was also present at this conversation.

And being interrogate for the pannel, whether the deponent then thought him serious, and in earnest, or that it was only a joke depones, That, at that time, he thought it proceeded from malice. And being further interrogate for the pannel, depones, he was at that time perfectly sober. Depones, That all they drank was a gill of aquavitæ, of which the deponent got a part. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

ALEX. CAMPBELL. P. GRANT.

Ewan Murray

EWAN MURRAY vintner, at west end of Lochearn, aged thirty four years, married, sworn, purged, and examined *ut supra*, depones, That, in April last, the pannel and Colin Maclaren merchant in Stirling, came to the deponent's house, and the pannel told the deponent, that Glenure had warned away several families in Ardshiel's estate to remove; and that he was informed, that none of the factors on the forfeited estates had power to remove the tenants; and that he was going to Edinburgh to take advice of lawyers about it; and, if he had not that power, that the pannel would apply for suspension in his own name, and in name of the rest of the tenants; and the conversation turning upon an officer of the army, that was branded with cowardice, and had been broke on that account, the pannel said, that he had reason to say that Glenure was as great a coward as that officer; for that he, the pannel, had challenged him to fight him, which Glenure declined; and desired the deponent to tell Glenure, that he had told him so; but the deponent answered, that he would not carry any such message from one gentleman to another; and, from the conversation, the deponent understood, that the arms with which the pannel had challenged Glenure to fight was pistols.

And being interrogate for the pannel, depones, That he thought the pannel was a little concerned with drink. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

EWAN MURRAY. P. GRANT.

Colin  
Maclaren

COLIN MACLAREN merchant in Stirling, aged twenty two years, unmarried, sworn, purged and examined *ut supra*, depones, That, in the month of April last, the deponent happened to lodge in the house of Alexander Campbell in Teynaluib a night, and in the morning about nine o'clock the pannel alighted there; and, having breakfasted and got a dram, the deponent

## Evidence for Prosecution.

understanding that the pannel was going the same road with him towards Stirling, desired the pannel to give the landlord a dram, that they might go on their journey; that the pannel answered, that he did not think he should help the landlord or any of his name to a dram or any thing else, if it was not to the gibbet: that he had mentioned to the landlord, that Glenure had warned him to remove from his possession in Ardshiel; therefore the landlord answered, that it seem'd if they were on the gibbet, the pannel would draw down their feet; and he supposed it was on Glenure's account; to which the pannel answered, he could not say but it was; upon which the pannel and landlord entered into an altercation together touching the justice of that removing; and, as the deponent had no concern in the matter, he took little notice to what passed. Depones, That, upon the landlord's using the above expression, that, if they were on the gibbet, the pannel would draw down their feet, the pannel's answer was in these words, that he did not chuse to be an executioner, but he could draw down some of them. Depones, That from Teynaluib the pannel and deponent proceeded on their journey, and about eleven o'clock or mid-day came to the house of Ewan Murray the preceeding witness: that there the pannel again complained of Glenure's removing him; told him it was one Campbell that was to succeed in his room: that he did not know any reason for Glenure's using him so; for that they were cousins: and, upon the deponent's saying, that possibly it was none of Glenure's fault, and that he could not help it, the pannel said, he did not know any business that either the exchequer or the factors had to turn out tenants, while they paid their rent; and said, that he was going to Edinburgh to get a suspension of the decreet of removing. Depones, That, having left Ewan Murray's house together, and the said Ewan in company with them, the conversation turned upon an officer in the army, who had been broke for cowardice; and the deponent said, he was surprised with it; for that that officer, as the deponent heard, had not declined to accept of a challenge to fight from Glenure; that thereupon the pannel said, that he esteemed that officer a better man than Glenure: and Ewan Murray having contradicted his being so good a man as Glenure, the pannel said, that he knew the contrary; for that he himself had given Glenure a challenge to fight him, which Glenure declined; and desired Ewan Murray to tell Glenure, that he would fight him when he would; but Ewan Murray declined to carry such a message. Depones, That, after parting with Ewan Murray, in the course of their journey the deponent found, that the removing was much at the pannel's heart; and the deponent endeavoured all he could to divert the conversation to another subject: that the pannel told him, that, if he

Collin  
MacIaren

## James Stewart.

Colin  
Maclaren

failed in his suspension at Edinburgh, he would carry it to the British parliament; and, if he failed there, told him, after a little pause, and with an emphasis, that he behoved to take the only other remedy that remained.

And, being interrogate for the pannel, depones, That, during the conversation in Campbell's house, above deponed upon, the deponent at first thought, that the pannel had been in joke; but afterwards it was like to become very serious; for the landlord and he came to pretty high words together; and, being further interrogate for the pannel, depones, That he did not think the pannel drunk, either in Campbell's house or in Ewan Murray's house; but, after leaving Murray's house, they drank two or three drams at a dram-house; and, after that, the deponent thought hi much concerned with liquor; and it was after taking these drams that the conversation between Murray and the pannel, with respect to challenging Glenure, happened. And depones, That they had rode several miles together, before the conversation about the British parliament; and the deponent thought him even then still concerned with drink. *Causa scientia patet.* And this is truth, as he shall answer to God. COLIN MACLAREN. P. GRANT.

John More  
Maccoll

JOHN MORE MACCOLL late servant to the pannel, aged thirty seven, married, witness cited, solemnly sworn, purged and examined by the sworn interpreter above named, depones, That he was present at a conversation that happened betwixt the pannel, John Beg and Dugald Maccolls, both servants to the pannel, in the pannel's brew-house at Aucharn, before day light upon a morning, about Yule last, as the deponent best remembers: that the deponent was then employed in distilling the second draught of a brewing of aquavitæ; and the pannel ordered the deponent to give him and the people present a dram, which the deponent did: that the pannel said, Glenure would not take the rent from the tenants of Aucharn, part of the Ardshiel estate, because they had given the pannel some bear, which Glenure alledged they ought to have paid him: that the pannel complained it was hard to refuse the rent in money from the tenants in a scarce year; and observed, that it would be of no great consequence to him, the pannel, tho' he should pay back the bear, in comparison to what it would be to the tenants for subsequent years, in case they were obliged to pay their farm bear and meal; and said, the tenants or commoners were likely to be very ill off: for, if Glenure went on in the way he then did, it was likely he would be laird of Appin in a very short time; and that he knew once a set of commoners in Appin who would not allow Glenure to go on at such a rate: to which the deponent and the rest answered,

## Evidence for Prosecution.

that they knew no commoners in the country that could strive or contend with Glenure in that manner. Depones, That he had no conversation with the said John or Dugald Maccolls t'at day, nor any time thereafter, about the import of the above communing. Depones, That, in seed-time last, when they were harrowing the tath-field in Aucharn, being the very day that James Stewart went for Edinburgh, Allan Breck Stewart came to the deponent and the said Dugald Maccoll, as they were yoking the horses; and the deponent, having asked him some questions about France, said, he did not see any of the people that went over there, come back in so good a way as they went over. To which Allan Breck replied, that they came back better than they went; and that they, meaning the people of Appin, might be much better, if they were worth themselves; upon the deponent's answering, that he did not see how that could happen, Allan Breck answered, if they, the commoners, were worth themselves, they could keep out Glenure, and hinder him from oppressing them; in which case, they would not be banished from their natural possessions; and, upon the deponent's answering, he did not see how any body could pretend to strive or struggle with Glenure in that way, as he had the laws of the King and the country for him, and no body to support or take them by the hand, after their so doing, Allan said, he had it in his power to save or protect any body that would put Glenure from trampling upon the country in the manner he then did: and, being interrogate for the pannel, what dress the said Allan Breck used to wear, when he saw him at Aucharn, Depones, That he always saw him wear a blue side coat, red waist-coat, and black breeches, with a hat and feather, except twice that he saw him in a black short coat, with white mettall buttons. The first time he saw him, with the said short coat, was, when the pannel was at Edinburgh: and the said Allan Breck told, he was going to Rannoch, and actually went away, and staid several days; and the other was upon Monday the 11th day of May last, when he saw the said Allan Breck come to Aucharn dressed in his long cloaths, and came directly where the pannel, Allan his son, John Peg Maccoll, and the deponent were covering potatoes: that, when All: came up, they were resting themselves, and sitting by one another: that Allan Breck sat with them; and all the conversation that the deponent noticed was, some questions about the welfare of the people of Glencrearan: and that he did not observe the pannel have any private conversation with the said Allan Breck; for that, a very little time after Allan Breck's arrival, the pannel had a message to meet Mr. Campbell of Airds at Keel; and that this happened after mid-day: that the pannel immediately, upon receiving the above message, went away in order to meet

John More  
Maccoll

## James Stewart.

**John More  
Maccoll**

Airds: and that no body went along with the pannel, Allan Breck having staid with them: that a little thereafter, the deponent, Allan Stewart the pannel's son, and John Beg Maccoll, went to cover potatoes at a greater distance from the pannel's house; that Allan Breck staid behind; and, some time thereafter, Allan Breck came where they were working, dressed in a black short coat with white mettall buttons and black breeches, and wrought with them in covering potatoes. Depones, That the deponent came very early upon Tuesday morning to the pannel's son, and found the servants getting up: that the deponent went to Aucharn at about a quarter of a mile's distance for a slaughter spade; and, as he was returning from thence, he met the pannel going for Appin's house; and, when he came to the pannel's house, he saw Allan Breck sitting in a room, dressed in the black short coat, combing his hair. Depones he never saw the said Allan Breck at work any of the times he saw him at Aucharn, except covering the potatoes upon the Monday evening as aforesaid. *Causa scientia patet.* And this is the truth, as he shall answer to God.

ARCH. CAMPBELL.    JA. FERGUSON.

**Dugald  
Maccoll**

DUGALD MACCOLL, servant to the pannel, unmarried, aged twenty four years, witness cited, sworn, purged and examined *ut supra*, by the forenamed sworn interpreter depones, That, in the latter end of Winter last, about day-break, the deponent was alongst with the pannel, in his brew-house at Aucharn, in company with John More Maccoll, and John Beg Maccoll, both servants to the pannel: that, after taking a dram of whisky, the conversation fell upon the tenants of Aucharn, a part of the forfeited estate of Ardschiell; and that it was then mentioned, that they were in use to pay some bear and meal as part of their rent: that the tenants of the said town of Aucharn had paid the bear to the pannel they were in use to pay, and made offer of money for that and the rest of the rent to Glenure the factor; and that Glenure refused to take the money, insisting to have the victual paid in kind as formerly; upon which the pannel said, that Glenure was like to hurt him, the said James Stewart, as much as was in his power; for, as the tenants had paid him the bear in use to be paid out of that farm, and turned it to his own use, he would be obliged to answer to Glenure for that article of the rent: but added, that that was not the worst of it, and that, if he, Glenure, went on in the same way, it was likely he would in five years be laird of Appin; and, upon the deponent and the said John More and John Beg Maccoll's saying, that that was likely to happen, the said James Stewart, the pannel, answered, that that was the fault of the commoners or followers: for however he, or people in circumstances like him, would shift for them-

## Evidence for Prosecution.

selves, they, the commoners, would be very badly off; and added, that he knew commoners once in Appin who would not allow Glenure to go on at such a rate; to which the deponent and the others present answered, that they believed that there might be commoners once in Appin who would do so. Depones, That he does not remember that he and John Beg Maccoll had, at any time that day or thereafter, any communing about the sense or meaning of this conversation that happened in the brew-house. Depones, That, upon the last night in December last, Glenure and John Campbell of Ballievoelan were in company with the pannel, John Stewart younger of Ballachelish, and James Stewart of Ardnamurchan uncle to the pannel, in the house of John Breck Maccombie change-keeper at Kintalline; and after night-fall, by the desire of his mistress, the deponent went there to attend his master home; that, after he came there, Glenure, the pannel and his company, drank till it was late at night, and the deponent heard them speaking together, but, as it was in English, he did not understand what they said: that, at last, they began to speak very loud and got up upon their feet: that the deponent and several other commoners, who happened to be at the house at the time, apprehending they were going to quarrel, went into the room in order to prevent it: that they still spoke loud and in English; and the deponent, with the assistance of John Maccombie, *alias* John the son of Duncan and grandson of Malcolm, and another John Maccombie, *alias* the son of Duncan and grandson of Duncan, both then tenants in Ardsheel, and John Roy Maccorquodale, then in Lettermore now in Ballachelish, carried the pannel, and the said James Stewart his uncle, out of the room: that they insisted for being back to the company, but that young Ballachelish came to them and told them that they must not go back, and that they ought to be good friends: upon which the pannel said he would not stir from the place, till he was told by Glenure if he would go to his house next day; that Ballachelish said he would go and get notice, and accordingly went into the room, and returned back in a little time, and told the pannel that Glenure promised to see him at his house next day: that the pannel asked if Glenure had promised so upon his honour; and, upon Ballachelish answering he did, the deponent and the said John Roy Maccorquodale carried the pannel over a burn adjoining to the said house of Kintalline in the road to Aucharn; upon which the pannel told them, they were better at that than in doing what they ought to do, and that it was to side with Glenure, not with him, that they were there; and asked the tenants then present, what kept them there so late, and why they did not go home in proper time of night? and, they answering that they were there waiting upon him,

## James Stewart.

Dugald  
Maccoll

the pannel replied, that it was not waiting upon him they were, but upon Glenure, to see what they could get by him: that he continued at such conversation as this, till they came to the fields of Auchindarroch, hard by Aucharn, when the said John Maccombie, *alias* the son of Duncan Macilchallum said, that he was told that Glenure had a drawn hanger in the room where they had been drinking, after the pannel and his uncle were carried out, declaring that he would not allow them to return to his company any more that night; upon which the pannel asked them, why he did not tell him that before he came away from the house, that he might see if it was true, and what Glenure meant by it? and insisted them on going back to know the truth of it; but, the deponent and the other tenants declaring they would not allow him to go back, he bid them go about their business and leave him, which they accordingly did; and the pannel and the said James Stewart, his uncle, went to Aucharn attended only, as he remembers, by the deponent and a boy-herd named Duncan Maccannanich: that, when this happened, the pannel James Stewart and his uncle were very drunk. Depones, That, some time in March last, when the deponent, and John More Maccoll were harrowing the tath-field at Aucharn, being the same day, or the day after the pannel went for Edinburgh, Allan Breck Stewart walked for a good time about the field; and, as they were loosing their horses, the said Allan Breck and they entered to conversation about France, and people from this country there; and John More Maccoll asked if there was any prospect of any of them's coming back. Upon Allan Breck's answering he was afraid they would not, John More said he wished that none had ever come from that country; in which the said Allan joined him, saying it had dispersed the friends he most regarded; and that it was a particular misfortune that the management of any concerns they left behind then, fell into the hands of one that was about to show them no manner of favour; and declared that he meant Glenure; and told that the commoners of Appin were little worth when they did not take him out of the way before now; and, upon their saying no body would run that risque not knowing who would stand by them, Allan answered that he knew a way to convey out of the way any person that would do so, in a way that he would never be caught; and also said, that they and the tribe they were of (meaning the Maccolls) were not like to be the least sufferers by Glenure's proceedings. Depones, That the first time he saw Allan Breck Stewart at Aucharn was about the beginning of the oat sowing which was pretty far advanced in the month of March: that he was then dressed in a side blue coat, red waistcoat and black breeches with a hat and feather: that, while he was in the country of Appin, he was for the most

## Evidence for Prosecution.

part at the pannel's house, but that he was absent once for a considerable time, when he said he was at Rannoch: that the deponent saw him when he said he was going to Rannoch: that he was then dressed in a black short coat with silver buttons belonging to the pannel, blue trowsers strip'd with white, and a dun great coat which the deponent thinks belonged to Allan Stewart the pannel's son; and being now shown the two black short coats in the clerk's hands, depones, That the coat with the silver buttons on the pockets belonged to the pannel, and is the same the said Allan Breck had on when he said he was going to Rannoch as aforesaid; and the other coat with no buttons upon the pocket belonged to Allan Stewart the pannel's son. Depones, That he saw him have on the same dress when he came back from Rannoch. Depones, That he does not mind to have seen the said Allan Breck wear the said short coat at any other time except upon Monday and Tuesday the 11th and 12th of May last. Depones, That, upon Monday the 11th day of May last, he went to the wood for fire-wood, and, upon his coming home in the afternoon, he found the said Allan Breck dressed in the said black short coat, working at potatoes along with John More Maccoll and John Beg Maccoll two of the pannel's servants, having on his own black breeches. Depones, That he saw the said Allan Breck, upon Tuesday morning the 12th of May last, in the pannel's house, dressed in the said black coat belonging to the pannel, and blue trowsers strip'd with white, such as now shown to him in the clerk's hands, and a blue bonnet. Depones, That the deponent was told the said Allan Breck left Aucharn early upon said Tuesday, and the deponent has not seen him since. Depones, That, upon Friday evening the 15th of May last, the deponent and John Beg Maccoll overtook Katharine Maccoll servant to the pannel, in the brae above the house of Aucharn, with a pock or sack and something in it under her arm; the deponent asked her what she had got in the sack? to which she answered, that it was Allan Breck's cloaths, and that she was going to hide them; and the deponent and the said John Beg Maccoll saw her hide the sack in which the said cloaths were; and that this happened about four o'clock in the said afternoon. Depones, That, upon Thursday evening, the 14th day of May last, after notice of Glenure's murder came to Aucharn, Allan Stewart, son to the pannel, desired the deponent and John B ; Maccoll to hide a large Spanish gun that used to stand in the brew-house; and told them, that he himself had concealed a lesser gun that used to stand at the end of the girdel in the barn, under the said girdel where he thought it would be safe. Depones, That the deponent, and the said John Beg Maccoll, on the said Thursday evening, hid the large or Spanish gun that used to

## James Stewart.

**Dugald Maccoll** stand in the brew-house under the thatch of the sheep-house, and three swords they took out of the barn, and a fourth that was brought by John Beg Maccoll, the deponent does not know from whence, under the thatch at the back of the barn. Depones, That, about four o'clock, Friday the 15th of May last, the pannel desired the deponent to carry the above arms from the houses, and hide them in the moor: that accordingly the deponent and John Beg Maccoll took the foresaid large gun from the back of the sheep-house under the thatch, and the said four swords from under the thatch of the barn, and found the gun that used to stand in the barn under the girdel, where the said Allan Stewart, the pannel's son, said he hid it, and carried them to the moor, and hid them in the hole of a rock, above the peat moss: and that it was told at Aucharn, that there were soldiers coming to the country before these arms were hid in the hill as above. Depones, That the said John Beg Maccoll and the deponent had the above arms, when they overtook Katharine Maccoll as aforesaid with the cloaths. Depones, That the large or Spanish gun that stood in the brew-house was charged with powder and small drops: and that there was no shot in the small or lesser gun that used to stand at the end of the girdel in the barn; but Allan Stewart, the pannel's son, carried out the said gun two or three mornings in order to shoot black cocks in the latter end of March, or beginning of April last. Depones, That Allan Breck Stewart was also in use to carry out the said large or Spanish gun to shoot black cocks; and, about that time, saw him endeavour to help the lock of the said gun with a file: and, being interrogate for the pannel, depones, That he, the deponent, has no skill about guns; but heard the said Allan Breck and Allan Stewart, the pannel's son, more than once complain, that the guns were in bad order. Depones, That, when the deponent came home from the wood upon Monday, the 11th day of May last, the pannel was not at home; and the deponent was told, he was gone to Keels to meet the laird of Airds: and that the deponent had gone to bed before the pannel came home that night: and that, early upon Tuesday morning, when the deponent got up, he saw the pannel without, who told him, that he was going to Appin's house: and that, to the deponent's knowledge, Allan Breck, or the pannel's sons, were not then up: that he saw the pannel go towards Lettershuna where Appin lives. Depones, That Allan Breck Stewart left Aucharn before the pannel returned from Lettershuna: and, upon an interrogatory put for the pannel, if the pannel had given the short black coat the deponent saw the said Allan Breck wear, and which he has deponed, belonged to the pannel, was given by the pannel to the deponent or any other of his servants before the said 11th of May, depones, That the said

## Evidence for Prosecution.

black coat was not given to him, the deponent, nor to any other of the servants to his knowledge: and, being interrogate for the pursuers, after showing him the powder-horn, now in the clerk's hands, and which had been formerly shown him, when he was examined upon the precognition, whether he had ever seen it before the time of taking the said precognition depones he never did.

Dougal  
Maccoll

And, being interrogate for the pannel, depones, That Glenure and Ballieveolan dined at the pannel's house, in company with the pannel the day after they were like to have quarrelled at Kintalline as aforesaid. Depones That it was ordinary for the pannel to give a dram to his servants every time he distilled a double draught of whisky. Depones, That the double draught was a-distilling when the deponent and the other servants got the dram mentioned in the first page of this deposition. *Causa e. die patet.* And this is the truth, as he shall answer to God; and declares he cannot write.

ARCH. CAMPBELL.    JA. FERGUSON.

JOHN BEG MACCOLL, servant to James Stewart pannel, aged twenty seven years, unmarried, sworn, purged, and examined *ut supra*, by the sworn interpreter, depones, That, the latter end of Winter, or beginning of Spring last, early in a morning, the pannel gave a dram to the deponent, Dougal Maccoll, and John More Maccoll, both servants to the pannel, in the pannel's brew-house: that, the conversation falling upon Glenure, the pannel complained that Glenure was no friend of his; but that that was not the worst of it; but that, if he was to go on as he did, it was likely, in five years, he would be laird of Appin; and the deponent and the other two Maccolls answering, that that was likely to happen, the pannel replied, that he knew once a set of commoners in Appin who would not allow Glenure to carry matters with such a high hand; and to which the deponent and the other two Maccolls answered, that they did not believe there was any commoner in Appin that durst contend or strive with Glenure in such a way: that, immediately thereafter, the deponent and Dougal Maccoll went out of the brew-house, leaving the pannel and John More Maccoll there. Depones, That, after they went out of the brew-house, either that day, or some time thereafter, the deponent and Dougal Maccoll talked together, what the import of this conversation might be; and that the deponent was at a loss whether to consider it as an encouragement to destroy Glenure, or as a complaint against the commoners of Appin, as not being so faithful to the pannel as he expected them to be. Depones, That, in March last, Allan Breck Stewart came to the pannel's house, late in the evening dressed in a blue side coat, red waist-coat, and black shag breeches, and

John Beg  
Maccoll

## James Stewart.

**John Beg Maccoll** a feathered hat: that he looked into the kitchen, and went immediately to the room where the pannel and his family were: that afterwards he used to go to the country to different places, and come frequently back to the pannel's house: that once he remained there a week which is the longest time he staid there at one time. Depones, That the said Allan Breck Stewart came to the pannel's house from Fasnacloich upon Monday the 11th of May last, about mid-day, dressed as above: that, upon the evening of the said day, the deponent saw the said Allan Breck dressed in a black short coat with silver buttons. Depones, That there was two short black coats, with silver buttons, in the pannel's house; the one belonging to the pannel, and the other to Allan Stewart his son; the deponent does not know which of them the said Allan Breck had on. And depones, That the coats were so like, that he could not distinguish the one from the other. And depones, That it was one of these black coats he had on, the deponent having seen him, the said Allan Breck, near the houses, in his side cloaths; and, some time thereafter, coming from the house, dressed in the said short coat, in the evening of the said Monday the 11th of May, and came where the deponent and John More Maccoll were covering potatoes, and wrought with them for some time. Depones, That, some time thereafter, a young lad, brother to Glenco, by name Donald, as the deponent thinks, came to them, and told that Glenure was come home from Edinburgh, and was to go to Lochaber; upon which, some conversation happening about removing the tenants, Allan Breck said, devil a bit of the new tenants would get possession unless they had a warrand to show, or come in by force. Depones, That, when the said Allan Breck came, upon the 11th of May last, to Aucharn, the pannel was seeing the deponent John More Maccoll and Dougal Maccoll working at potatoes: and that Allan Stewart the pannel's son was likewise there: that, when Allan Breck came, they were sitting all together; and that he seated himself by the pannel, and had some conversation in English, which the deponent does not understand. Depones, That Charles Stewart son to the pannel and Stewart, daughter of Fasnacloich,\* came to Aucharn from Fasnacloich, a little after the said Allan Breck. Depones, That, upon Thursday, the 14th of May last, the pannel gave a letter to the deponent to be delivered to Charles Stewart notary public at Maryburgh; and told the deponent, that the letter was to make or cause the said Charles Stewart come to the country of Appin to protest against Glenure, in case he had not a sufficient warrand to remove the tenants of Ardshiel. Depones, That the pannel

\* Fasnacloich had two daughters, Mary and Anne. They were step-sisters. Probably the young lady here in question was Mary, the elder.

## Evidence for Prosecution.

desired the deponent to make all possible dispatch, and desire John Breck Maccombie at Kintalline, and the said John More John Beg  
Maccoll Maccoll, servant to the pannel, who was then at Kintalline, to ferry the deponent from Kintalline to Onich, being much shorter than the ferry of Ballachelish. Depones, That the pannel also told him, that he was to get some money from William Stewart merchant at Maryburgh to pay for milk cows that were bought for him in the country; and that, if the money was not sent, he would not get the cows. Depones, That he was ferried from Kintalline to Onich, and went on to Fort-William, and met Glenure at the three-mile water, who asked the deponent from whence he came, to which the deponent answered, that he had come over Keilis. Depones, That, being acquainted with Glenure's servant, he had some conversation with him, and told him, he was going to Fort-William. Depones, That he set out from Aucharn, about seven or eight o'clock in the morning, and made all the dispatch he could to Fort-William, where he arrived about twelve o'clock. Depones, That, when he came to Fort-William, he delivered the letter he got from the pannel to William Stewart merchant in Maryburgh, who told him, that Charles Stewart the notary was not at home, he having gone to the braes of Lochaber in the morning; and told the deponent, that he, the said William, had wrote to the pannel in the morning; and that there was a notary along with Glenure, who would serve the pannel as well as Glenure. Depones, That he does not remember that he asked for any money from William Stewart, nor did he give him any, but said, he would send servants for the cattle. Depones, That he staid a very short time at Fort-William: that the said William Stewart asked him, if he wanted victuals. Upon the deponent's answering he did not, the said William brought him into his house, and gave him a dram; and the deponent immediately returned back by the short road to the ferry of Ballachelish, and found Glenure at the ferry before him: that the deponent required of the ferry-man to ferry him immediately, and the ferry-man desired him to stay till he would be ferried with Glenure's horses; but the deponent observed to him that the stream was rapid, and might draw some time before they would ferry the horses, he ought to ferry him immediately, which he accordingly did; and that this might be about four o'clock: that, upon his crossing the ferry, he met Archibald Macinnes ferryer upon the Appin side, to whom he told where he had been, and his errand; and that the said ferryer told the deponent that he was informed by a man, that he was going to meet Glenure: that the new tenants, that were to come to Ardshiel, had come to Glenduror with their cattle; and were to take possession next day; and the deponent told him, that he did not believe

## James Stewart.

**John Beg** they would get possession till their warrands were seen.  
**Maccoll** Depones, That, a little thereafter, he met Alexander Stewart elder of Ballachelish, to whom he told where he had been, and his errand, and the conversation he had with the ferry-man, and Ballachelish desired him to tell his master, if he would send for him, he would go along with him to see Glenure's warrand. Depones, That he passed through the wood of Lettermore, and met or saw no body there: that he went then home and gave the pannel an account of his errand: that he was hardly an hour there when John Mackenzie, Glenure's servant, came to the door calling for the pannel: that the pannel went immediately to the door, and asked the servant, what was the matter, and what news he had, to which the servant replied, "The worst I ever had. My master is murdered in the wood of Lettermore"; upon which James Stewart said, "Lord bless me, was he shot?" to which the servant answered, that he was shot, and said, the pannel ought to go and take care of the corpse: that the servant immediately went off, but neither the pannel nor any of his family went near the corpse; and the pannel said, that, as he and Glenure were not in good terms, and some of the people that were to meet Glenure had arms, he did not care to go near them, not knowing what might happen. Depones, That his master said, that this was a dreadful accident, and was afraid would bring trouble on the country; and appeared to be sorry for what had happened. Depones, That, upon the evening of Friday the 15th of May last, the deponent and the said Dougal Maccoll overtook Katharine Maccoll, servant to the pannel, going up the brae above the house with a sack and something in it under her arm, and the said Dougal Maccoll asked her, what she had got there, to which she answered, that it was Allan Breck's cloaths which she was going to hide; and she hid them accordingly in the deponent's presence. Depones, That, when the said Allan Breck came first to Aucharn, he used to lie in a room in the lower end of the house; but afterwards he and the pannel's sons, and any young people that came about the house, when the season was more advanced, used to lie in the barn. Depones, That, upon the said Friday evening the 15th of May last, Margaret Stewart, the pannel's wife, desired the deponent and the said Dougal Maccoll to hide all the arms that was about the house, as there were a party of soldiers coming to the country: that accordingly they took two guns and three swords, and a fourth sword was delivered to the deponent by Allan Stewart son to the pannel; which two guns and four swords the deponent and the said Dougal Maccoll hid in the brae a good way above the pannel's house; and the two guns in the clerk's hands being shown to the deponent, depones, That these were the same two guns that

## Evidence for Prosecution.

were hid as above. Depones, That the largest of the guns, **John Doug Maccoll** now shown the deponent, was loaded, and lay in the brew-house; and the deponent believes, that either Allan Stewart the pannel's son, or Allan Breck Stewart charged the said gun; for the deponent saw Allan Breck Stewart have the said gun some time before, and go with it in order to shoot black cocks: that, late on Thursday evening the 14th of May last, after notice came of Glenure's murder, the said Dougal Maccoll told the deponent, that the pannel's wife had desired to hide all the arms about the house, not knowing but that some soldiers might come to the country; upon which the deponent and the said Dougal carried the said loaded gun from the brew-house, and hid it under the thatch upon the outside of the sheep-house, and carried three swords out of the barn, and hid them under the thatch upon the outside of the said barn, being that barn where the pannel's children and Allan Breck used to lie: that, upon their being desired by the said Margaret Stewart next day, to hide the arms better, they took the foresaid loaded gun and three swords out of the places where they had hid them; and upon their inquiring for the other gun that used to lie in the said barn, Allan Stewart, the pannel's son, told them, he had hid it under the large girdle in the barn, and told them they need not stir it as it was safe enough there; but they answered, as they were hiding the rest, they would hide that likewise; and accordingly the deponent went and took the said gun from the girdle where the said Allan told him he had hid it, and concealed them all together as above: upon recollection depones, That it was upon the Thursday evening the deponent and the said Dougal Maccoll inquired about the little gun which lay at the end of the girdle in the barn, and that the said Allan Stewart son to the pannel told them he had hid it, as above, under the girdle. Depones, so far as he can remember, he did not see the said little gun upon Thursday, but saw it stand, as above, either upon Tuesday or Wednesday preceeding, and used for some time preceeding to see it stand in the same place. Depones, That it was upon Friday evening the deponent took the said gun from under the girdle where the said Allan had hid it; and adds, that the reason he did not see it on the Thursday was, that he was from home almost all that day. Depones, That he did not see the said little gun loaded since March last, when the black cocks were crouding; that then there was a shot of drops in it, and the said Allan Breck carried it out one morning, and told that it misgave with him thrice at a black cock, and shot with it the fourth time without killing the black cock. Depones, That the brew-house, where the said large gun used to lie was always locked but when people were in it: that the barn where the said

## James Stewart.

John Breck  
Maccoll

little gun stood, had a lock and key, but was not in use to be locked since the crop was removed out of it, which was at the time they were done with their oat-seed, which was some time before May-day. And, being interrogate for the pannel, depones, That neither of the guns were in good order: that the large or loaded gun was in use, when going to be snapped, to stand at half cock, and the little gun was in use to snap or misfire. Depones, That the little gun had an old wore flint in it; and that he observed this flint in the said gun when he was in use to see it stand at the end of the girnel as above, but did not observe whether it had a flint or no when he took it from under the girnel as above. Depones, That he knows no fault the lock of the little gun had, but its being in use to misfire; and that the lock was on the said gun when he hid it the Friday evening as above. Depones, That when Allan Breck came, upon Monday, the 11th of May last, to the place where the pannel, deponent, and others, were covering potatoes as above, they had sit together but for about a quarter of an hour; the deponent went to work at potatoes at a greater distance, and, before he went away, heard a message had come for his master, to meet Airds at Keil, and heard his master speak of going there; but when he went, or who went along with him, the deponent does not know: that the deponent continued working at the potatoes till the evening, and the pannel was not come home when he came from his work: that the pannel came home at bedtime, accompanied with John More Macilichattan, who lay with the deponent that night. Depones, That it was a while after (the deponent cannot say how long) the pannel parted from the deponent and the other people that wrought at the potatoe-ground: that Allan Breck came dressed in the black short coat as above, and wrought with them at the potatoes. Depones, That they all got up together, after the said Allan Breck came to them, and sat with them as above; and he thinks the pannel went then towards the house. Depones, That Allan Breck and the pannel were in use to converse together, sometimes in English, and sometimes in the Irish\* language. Depones, That, when he went to Fort-William, with the above letter, to Charles Stewart the notary, he had no orders from his master to inquire after the motions of Glenure, or to acquaint any body thereof. Depones, That he never saw the said Allan Breck Stewart change his cloaths, and put on short cloaths, at any time, at the said James Stewart's house, before the said 11th of May; but that, as the deponent best remembers, at the time the said James Stewart was at Edinburgh, he saw the said Allan Breck dressed in a

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\* The Gaelic language.

## Evidence for Prosecution.

black short coat, a dun big coat which the deponent thinks belonged to Allan Stewart the pannel's son; and he heard the said Allan Breck, or others about the house, say, that he was then going to Rannoch. *Causa scientiæ patet.* And this is truth, as he shall answer to God; and depones he cannot write.

ARCH. CAMPBELL. P. GRANT.

CAPTAIN DAVID CHAPEAU, in General Pultney's regiment of foot, married, aged fifty two, witness cited, sworn, purged and examined *ut supra*, depones, That, upon the 23d of May last, he was informed by Mr. Campbell of Barcaldine, that there were some arms hid among the rocks near the pannel's house; and was, at the same time, shown the paragraph of a letter from Colonel Crawford, who commands the regiment to which the deponent belongs, addressed to Barcaldine, wherein the colonel desired the deponent to go in search of such arms. Accordingly the deponent went that day with a party, and took along with him Mr. Patrick Campbell of Auchlinscailan, to direct him the road; and, when they came to a hill above the pannel's house, Mr. Campbell found concealed in a hill, above the pannel's house, two muskets, and four broad swords, whereof having informed the deponent, the deponent went and saw them taken out. And the muskets or fuzees, now in the clerk's hands, being shown to the deponent, depones, That they are the very same fuzees he saw taken out as aforesaid: and depones, That the largest of the two fuzees was loaded, and the other not; and that, having drawn the shot of the loaded piece, found it to be loaded with small shot, by which he means drops and small slug mixed together: and it appeared to the deponent, that the said unloaded piece had been lately fired, having put his finger in the muzzle, which he brought out black.

And, being interrogate for the pannel, whether a piece which is laid by foul, will not, after a month's time, file one's finger, when put in the muzzle of it, as well as when it has been lately fired, depones, he cannot tell, not being accustomed to see arms used so. And depones, That the said unloaded piece had a lock upon it at the time; but which had only one screw nail in it. But depones, That a gun, having a lock with one screw nail, may be fit enough to be fired with. And adds, That that end of the lock wanting the nail, was tied to the stock by a string. Depones, That the pieces, or fuzees, were carried along to Fort-William, where the deponent delivered them over to the adjutant at Fort-William; and does not know by what means the said lock, upon the small piece, now amissing, was lost; but believes it to have been by accident. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

D. CHAPEAU. JA. FERGUSON.

## James Stewart.

Patrick  
Campbell

PATRICK CAMPBELL in Auchinsicallan, married, aged thirty three years, witness cited, sworn, purged, and examined *ut supra*, depones, That, some time in May last, he thinks on the 23d, he was called by Captain Chapeau to go along with him to Aucharn in search of arms; and, having come to a moss, above the pannel's house of Aucharn, the deponent discovered two guns in a cove; whereupon he immediately called to the captain, who was with him, when they were taken out of the cove; as also, there was also there three or four broad swords. Depones, That one of the guns was heavier than the other; and the lightest gun had a stick laid along the lock tied by a string about the stock: but, whether the said lock had any screw nail, or not, he does not remember: and that these arms were carried away by Captain Chapeau. Depones, That the lightest of the said two guns was unloaded, and the heaviest loaded: that he saw the shot of the loaded gun drawn, which consisted of drops, with some small siug among them. Depones, That, in order to know whether the unloaded piece had been lately fired, severals put their finger in the muzzle of it; and particularly the deponent; and the finger coming out black, he, and the rest with him, from thence concluded, that it had been lately fired.

And being interrogate for the pannel, whether a musket that has been laid by foul, after firing, will not, in like manner, file a man's finger put in the muzzle of it, after it has been fired a month or longer before, depones, That he never made that trial upon a gun that he knew to have been so long before fired. *Causa scientiæ patet.* And this is the truth, as he shall answer to God.

PAT. CAMPBELL. JA. FERGUSON.

William  
Stewart

WILLIAM STEWART merchant in Maryburgh, aged thirty six years, married, sworn, purged, and examined *ut supra*; and, being shown a letter,\* dated at Maryburgh the 14th of May last, signed William Stewart, and addressed on the back to the pannel, being the writing number 10. in the inventory subjoined to the libel; depones, That the letter is of his hand-writing, and was subscribed by him, and sent to the pannel, of the date it bears, by Ewan Mackenzie a common carrier in Maryburgh. And, being also shown a letter\* dated at Aucharn, the 14th of May last, eight o'clock in the morning, signed James Stewart, and addressed on the back to Mr. Charles Stewart writer at Auchintour, depones, That the said letter was wrote by the pannel, and sent, of the date it bears, by John Beg Maccoll, and in absence of the said Charles Stewart, who was not then at Maryburgh, was delivered by the said

\* See p. 210.

## Evidence for Prosecution.

Maccoll to the deponent, who broke it open, and told Maccoll, William Stewart that Charles Stewart was not then in Maryburgh, but that he expected him that night, but thought that he could not go along with Maccoll: that Maccoll asked the deponent if he should wait for him, or go after him, the deponent answered, it was needless; for, if Charles Stewart could go, he would take a boat. And, being interrogate whether he wrote any answer by John Maccoll, or, if he gave him any verbal answer to the postscript wherein the pannel wrote to Charles Stewart, to tell the deponent to send him eight pounds Sterling? depones, he gave no answer in writing; and thinks he did not give any verbal answer, if it was not that he bid him tell his master, he was not in cash, which was the case. And depones, That the deponent was himself intended by the "William" in the postscript. Depones, That Maccoll did not stay three minutes with the deponent, when he went away. Depones, That the next day, being Friday, or the day thereafter, the deponent had a message from the pannel about ten o'clock forenoon, or betwixt ten and twelve, by Alexander Stewart packman, who told the deponent, that he was sent by the pannel to Glenevis, and was ordered in his way to call at the deponent to send the pannel five pounds Sterling; and that his errand to Glenevis, was, to desire hir to send for a horse that he had bought from the pannel: that the deponent told the packman, that he was not in cash, and could not send the five pounds; upon which the packman said, that the five pounds was to relieve some cows that the pannel had bought for the deponent at Ardshiel; and, if the deponent did not send the money, he could not get the cows: that the deponent said, he was indifferent, but had not the money to send; upon which the deponent's wife desired the packman to go forward to Glenevis, and to call there in his return, and he would get the money, because they could not conveniently want the cows: that the packman accordingly went away; and the deponent's wife, as she afterwards told him, for he was not present, gave him three guineas: that the deponent is sure the money was not given on a Sunday, and thinks it was on a Saturday; and therefore believes it was upon Friday the 15th, that the packman first called the deponent, being certain, that a night intervened betwixt his calling and getting the money. Depones, That he had no conversation with the packman touching Allan Breck Stewart, whose name was not mentioned by either of them; but the deponent asked him, if he had come by the road where that unlucky murder of Glenure had happened, and the packman told him, he did; but the deponent did not ask him who was suspected for it; nor had any other conversation on that subject, there being a great many people present in the shop at the time. Depones, That

## James Stewart.

William  
Stewart

the deponent received two of the cows about eight or ten days after, and other two he did not get at all. And being interrogate for the pannel, depones, That, upon Allan Breck Stewart's first coming to this country, which was in the month of February or March last, the deponent saw him at Edinburgh: that thereafter, upon the 1st of May last, the deponent happening to be at the pannel's house, Allan Breck Stewart came there from Rannoch, and was dressed in a short black coat with clear buttons, such as these now lying in the court. Depones, That, when the deponent saw Allan Breck Stewart at Edinburgh, which, he thinks, was in February, he told the deponent, that it was then but three or four days since he arrived from France. Depones, That, at that time, Allan Breck Stewart was dressed in long cloaths, a blue coat, and, as the deponent thinks, a red vest, a hat feathered in the inside. Depones, That, when the deponent was at the pannel's, the 1st of May, Charles Stewart was there also, in order to go to Glenure and intimate a sist that had been obtained in name of the tenants of Ardshiel, upon a bill of suspension of a removing against them. Depones, That Allan Breck Stewart told the deponent, that he had been a soldier in the King's troops at the battle of Preston;\* and he thinks, he said, it was in Lascelle's regiment, but is not positive whether it was Lascelle's or Murray's. And depones, That thereafter he was in the rebellion. Depones, That, when he was at the pannel's house, the 1st of May, as aforesaid, he did not sleep within the pannel's house, and seemed to be on the watch, lest he should be searched for; and, being interrogate, whether Allan Breck Stewart did not then lie in the barn, and some of the pannel's children with him, he says, it is very probable he might; but the deponent knows nothing of it; for the deponent saw him next morning, and, he thinks, breakfasted with him at the pannel's house. Depones, That the deponent is first cousin to the pannel, and also his brother-in-law. Depones, That, before Charles Stewart went with the tenants to Glenure's house, upon the 1st of May, the deponent heard the pannel say to the tenants, that they might go, or not, as they thought proper; but he would be far from advising them. *Causa scientia patet.* And this is truth. as he shall answer to God.

WILLIAM STEWART. P. GRANT.

Barbara  
Watt or  
Stewart

BARBARA WATT spouse to William Stewart, merchant in Maryburgh, aged twenty eight years, sworn, purged, and examined *ut supra*, depones, That the day immediately after the murder of Glenure, about mid-day, Alexander Stewart packman brought the deponent's husband, the preceeding witness, a message

\* Prestonpans.

## Evidence for Prosecution.

from the pannel, to send him five pounds Sterling to pay for some cows, that the pannel had bought for him: that the deponent's husband was angry at the message, and said, that he had not then the money to give, having given away some money that morning; but that tho' he had it, he would not send it; and the packman answered, that he was a sufficient *but* himself for all the sum, tho' the pannel had not sent for it: that the packman told at the same time, that he was going to Glenevis on some message from the pannel touching a horse; therefore the deponent interposed, and desired the packman to call there in his return from Glenevis, and he would get the money; for that they behoved to have the cows to stock a farm they had: that this conversation happened in the deponent's shop, where several other persons were present. Depones That, next day in the afternoon, the deponent's husband, not being then at home, the deponent met the packman in the street of Maryburgh, and happening to have three guineas then in her purse, she gave them to him there in the street, and called her servant-maid to be witness, because there was no letter from the pannel, nor receipt to be given by the packman. *Causa scientiæ patet.* And this is the truth, as she shall answer to God.

Barbara  
Watt

BARBARA WATT. F. GRANT.

ALEXANDER STEWART travelling packman in Appin, aged thirty, unmarried, witness cited, sworn, purged, and examined *ut supra*, by Archibald Campbell writer in Inverary, sworn interpreter foresaid, depones, That, upon Friday the 15th day of May last, about twelve o'clock, the pannel desired the deponent to go to Fort-William, to William Stewart merchant there, and get from him five pounds, or five guineas, and told the deponent, that his friend Allan Breck was about to leave the country, as there were troops coming into it, and that he might be suspected of Glenure's murder; and that it was incumbent upon him, the pannel, to supply the said Allan Breck in money; and the pannel desired the deponent to tell the said William Stewart, that he must send him money, tho' he should borrow it from twenty purses; and desired him also to tell the said William to give credit in five pounds Sterling to John Breck Maccoll bouman to Appin, at Koalisnacoan, in case he came to demand such a sum; and the pannel desired the deponent to demand four pounds Sterling more from the said William, as the price of a couple of milk cows bought for him. Depones, That, in consequence of the above message, he went to Fort-William, where he arrived early in the evening: that he met the said William Stewart, and demanded from him for the use of the pannel the two sums above mentioned: that the said William told him he had not money,

Alexander  
Stewart

## James Stewart.

Alexander  
Stewart

but desired the deponent to go to Glenevis, and that he, the said William, had business to Glenevis, would meet the deponent there in the morning, and give him his errand. Depones, That the pannel desired the deponent to tell the said William Stewart to send notice to Glenevis, that he should send for a stoned horse Glenevis had bought from the pannel. Depones, That he went to Glenevis, where he arrived about sun-set, and staid there the said Friday's night: that as the said William did not come there Saturday morning, the 16th day of May last, the deponent went back to Fort-William, and met the said William Stewart upon the street, and asked him, if his answer was ready. That the said William said, that he would let him go immediately, and went into his own house, and immediately thereafter Mrs. Stewart, spouse to the said William, came to the door, and gave the deponent three guineas, with which the deponent went back immediately to Aucharn, and arrived there in the evening of the said Saturday the 16th of May: that when he came to Aucharn, the pannel was not at home; but soon after the deponent's arrival, notice came, that the pannel and Allan Stewart his son were made prisoners at Inshaig, a place of about a quarter of a mile from Aucharn: that, immediately upon this notice, Mrs. Stewart the pannel's wife and the deponent went to Inshaig, and by the way the deponent offered the three guineas he had brought from Fort-William to Mrs. Stewart, but she desired him to keep them: that, upon their arrival at Inshaig, they found the pannel a prisoner; but Mrs. Stewart and the deponent having had access to converse with the pannel apart, the pannel asked the deponent, what money he brought from Fort-William: and upon the deponent's telling him, that he brought three guineas, the pannel pulled a green purse out of his pocket, out of which he took two guineas, and gave them to Mrs. Stewart, and Mrs. Stewart delivered the two guineas immediately to the deponent; and the pannel desired, that the five guineas should be sent to that unhappy man, meaning Allan Breck, to see if he could make his escape: and pitched upon the deponent as a person that should go with the money; and does not remember positively, that the pannel spoke about Allan Breck's cloaths: that soon thereafter the pannel was carried off by a party to Fort-William; and the deponent returned to Aucharn with the pannel's wife: that the party and pannel called at Aucharn, and took a dram; and upon their going off, Mrs. Stewart, the pannel's wife, told the deponent, that he must go to Allan Breck with the five guineas and his cloaths; and upon the deponent's inquiring where he would find him, Mrs. Stewart told him, that he would cast up in Koalisnacoan. Depones, That, some time after night-fall, the deponent got his supper at Aucharn, and how soon he was done

## Evidence for Prosecution.

eating, Mrs. Stewart, the pannel's wife, carried the deponent Alexander  
Stewart to the back of the brew-house, where there lay a sack, out of which the said Mrs. Stewart took a blue side coat, red waistcoat, black breeches, a hat, and some shirts, all which she delivered to the deponent, ordering him to go with the cloaths and money to Koalisnacoon immediately, and deliver them to John Breck Maccoll bouman to Appin, if he did not meet Allan Breck himself. Depones, That the said Mrs. Stewart directed the deponent not to carry the cloaths to John Breck Maccoll's house, lest any body might see them. Depones, That he declined going, and told Mrs. Stewart, that she might send some other person, and that, at any rate, he did not chuse to go alone in the night time; but that Mrs. Stewart insisted upon his going, telling there was no other body she could send, as both her servants were gone to Fort-William, and desired the deponent to carry his sister Margaret Stewart a part of the way with them: that accordingly the said Margaret his sister went along with the deponent as far as Larich in Glenco, where she parted with him about day-light Sunday morning: that thereafter the deponent travelled alone to Koalisnacoon, and left the cloaths, as directed, at the root of a fir-tree, at some distance from the houses; and as the deponent was going to the house, he met said John Breck Maccoll, and asked him if Allan Breck was there; and upon his denying that he was there, the deponent expressed some surprize, and told that he was sent with money and cloaths to him; told from whence he came, and how he got the money and cloaths above mentioned; upon which the said John Breck Maccoll told the deponent, that Allan Breck was in the heugh of Corrynakeigh, above the house of Koalisnacoon; and if the deponent inclined to see, the said John Breck Maccoll directed him to go to a hill above the houses and whistle, and that the said Allan Breck would come to him: that the deponent answered, he had gone far enough after the said Allan Breck already, pointed out to John Breck where he had left the cloaths, and gave him the five guineas to be given Allan Breck. Depones, That he went to the said John Breck's house, where he slept for some time, and thereafter dined with the said John Breck at his house. Depones, That the said John Breck Maccoll told the deponent he did not know how the said Allan Breck could leave the country, as he had no victuals, and he, the said John, had none to give him, and desired the deponent to go to Mrs. Macdonald of Glenco's house at Inver, and get a peck of meal for Allan Breck's use, which the deponent refused. Depones, That the said John Breck Maccoll told the deponent, that, unless he had come with the money and cloaths, he, the said John Breck, would hence be obliged to go to Fort-William for money to the said

## James Stewart.

Alexander  
Stewart

Allan Breck. Depones, That he, the deponent, came back to Aucharn upon the evening of the Sunday the 17th day of May last, and the pannel's wife asked him, if he had seen Allan Breck, and upon his answering he had not, and telling that Allan Breck was at Koalisnacoon, tho' he had not seen him, and that he had given the cloaths and money to John Breck, she appeared satisfied. Depones, That the said John Breck Maccoll desired the deponent to conceal his carrying the cloaths and money to Koalisnacoon, as above; told him, that he could not prove it against him, and that he could safely depone he did not deliver the cloaths to 'im, since he only pointed out where they were. *Causa scientiæ patet.* And this is truth, as he shall answer to God. And declares he cannot write. And further depones, That he is a distant relation of the pannel's, tho' he cannot tell the degree: that his father lives at a quarter of a mile's distance from Aucharn; and that he, the deponent, used to be often in the pannel's house. And this is also truth, as he shall answer to God.

ARCH. CAMPBELL. P. GRANT.

John Breck  
Maccoll

JOHN BRECK MACCOLL bouman\* to Appin in Koalisnacoon, aged forty years, married, sworn, purged and examined *ut supra*, by the above Mr. Archibald Campbell sworn interpreter, depones, That, upon the afternoon of Saturday the 16th day of May last, as the deponent was in a fir bush near Aldavoim, at the foot of the heugh of Corrynakeigh in Koalisnacoon, he heard a whistle; and, upon looking up, saw Allan Breck Stewart, at a little distance, beckoning to the deponent to come towards him; which he did: that, after salutations, the deponent told him, he was afraid it was no good action that occasioned his being in such a remote place, and at such a distance from any common road: that Allan Breck answered, the place was not very far from a common road: that the deponent, having heard the day before of Glenure's murder, charged Allan Breck with being guilty of it: that Allan Breck asked the deponent, what he had heard about the murder; that the deponent answered, that he had seen no person from the strath of Appin; but that two poor women that had come up Glenco were telling, that Glenure was murdered Thursday evening in the wood of Lettermore; and that two people were seen going from the place where he was murdered; and that he, Allan Breck, was said to be one of them: that Allan Breck answered, he had no concern in it; and that, if his information was right, there was but one person about the murder, and

\* A bouman was not an ordinary servant. He received from his principal the farm stock, and though it remained the principal's property, the bouman received as his payment the increase so far as it exceeded an agreed-on proportion.

## Evidence for Prosecution.

that, as he was idle in the country, he was sure he would be suspected of it; but that that would give him little concern, if he had not been a deserter, which would bear harder upon him, in case he was apprehended, than any thing could be proved against him about the murder: that the deponent did not believe him, when he said he had no hand in the murder of Glenure; and not caring to press it much upon him, told him, that, as he was already suspected, it was dangerous to have any intercourse with him, and pressed him to leave the place, lest he should bring the deponent and his family to trouble: that Allan Breck said, he did not doubt but the family of Ardshiel would be suspected of the murder, and it was probable the pannel and Allan Stewart his son might be taken into custody about it; and that he, Allan Breck, was afraid Allan Stewart the pannel's son's tongue was not so good as his father's,\* by which words the deponent understood, that Allan was easier entrapped than the pannel; and the deponent still insisting upon Allan Breck's leaving that neighbourhood, the said Allan Breck told him, he would not leave the town for eight days, unless some necessities he expected came to him; and told the deponent, unless some money came for him before next morning, he, the deponent, must go to Fort-William with a letter; that tho' the deponent refused to go, Allan Breck look'd about among the trees, and finding a wood pigeon's quill, made a pen of it, and, having made ink of some powder he took out of a powder-horn that was in his pocket, he wrote a letter, which he told the deponent he must deliver to William Stewart merchant at Maryburgh; and, upon the deponent's telling him that he would by no means undertake that, as he was informed that every body that went to Fort-William was searched, Allan Breck said it was an easy matter to hide a letter; the deponent answered, if he was catched upon the streets, what would he do with it? Allan Breck told him, that the letter must not be found upon him by any means, and, if he was catched with the letter, he must eat it before it was found: that the deponent then told the said Allan Breck, that he did not know but he would be obliged to go for some beer next day to Fort-William, in which case he might possibly carry the letter; but at the same time, told the said Allan Breck, if he was catched with the letter, he would tell all he knew about him; that the said Allan Breck

John Breck  
Maccolli

\* The weight of the Prosecutors' case against James Stewart rested to a great extent on this bouman's evidence, and particularly upon this alleged expression of fear lest the tongues of James and Allan should betray them. The unpublished correspondence indicates that the bouman had been interviewed by the prisoner's friends soon after the murder and threatened by them and that he asked the Crown authorities to have him arrested so that his witness-bearing might not seem voluntary and thus bring him into trouble.

## James Stewart.

John Breck  
Maccoll

desired the deponent to go to Callart or Glenco's house for a peck of meal to him, which the deponent refused; and at parting, the said Allan Breck told the deponent, he would see him next day. Depones, That, at the time of the above conversation, the said Allan Breck Stewart was dressed in a dun coloured great coat, black short coat, and blue trowsers strip'd with white. And the deponent having seen in court the black short coat, with the buttons on the pockets, and the trowsers, depones, That they are the short coat and trowsers he saw the said Allan Breck wear, or exactly like them. Depones, That, early upon Sunday morning the 17th day of May last, as the deponent got up to look about his corns, he saw a man, which he at first imagined to be the said Allan Breck Stewart, travelling towards him up the glen; but, upon his coming near, the deponent knew him to be Alexander Stewart, travelling packman in Appin (the immediate preceeding witness) who is cousin-german by the father's side to Allan Breck; and, after salutation, and the deponent's expressing his surprize at seeing him so early, the said Alexander Stewart asked the deponent, if he had seen Allan Breck. And the deponent refusing his having seen him, Alexander Stewart seemed surprised, and told that he was informed he would meet Allan Breck there; and that he had brought some necessaries for him: and the deponent inquiring what he had brought, the said Alexander Stewart informed him, that he had brought five guineas and some cloaths; and told that he had a great deal of trouble in getting the money: that he had been sent by the pannel to William Stewart merchant at Fort-William, from whose wife he got three guineas; and that the pannel, or his wife, gave him the other two guineas; and that the pannel's wife gave him the cloaths, and informed him, that Allan Breck was to meet him at Koalisnacoan; but that now he would leave the money and cloaths with the deponent: upon this the deponent told the said Alexander Stewart, that he had seen Allan Breck the day before, and that he expected these things; and told him, that he believed Allan Breck was then in the heugh of Corrynakeigh, and if he would go to a hill that the deponent pointed out to him, and whistle once or twice, he believed Allan Breck would come to him: the said Alexander Stewart declined going, alledging he was very much fatigued: that the deponent told the said Alexander Stewart, that he wondered he would not go that length to see his uncle's son; the said Alexander Stewart answered, that he had slept none for two nights, and was very much fatigued; and upon this he delivered to the deponent the five guineas, and told he had left the cloaths at some distance, and would show them to the deponent when he was going away: that the deponent told the said Alexander Stewart, that Allan Breck wanted a

## Evidence for Prosecution.

peck of meal from Glenco or Callart's house; and that he, the said Alexander Stewart, ought to get it for him; but the said Alexander Stewart refused to go for it: that, afterwards, the said Alexander Stewart slept in the deponent's house. Depones, That the said Alexander Stewart told him, that the pannel and Allan his son were made prisoners the evening before, and sent to Fort-William: and, upon the deponent's inquiring, who was suspected to Glenure's murder, the said Alexander answered, that it was Allan Breck, and that it was likely that the pannel and Allan his son would stand the first trial for it. Depones, That the said Alexander Stewart and the deponent dined together; and as the said Alexander Stewart was going away, about twelve o'clock, he pointed out a fir-tree, at the root of which he said he had hid Allan Breck's cloaths. Depones, That, after the deponent had gone to bed, upon the said Sunday evening, he heard one knocking at the window, and imagined it might be Allan Breck; the deponent got up, and went out in his shirt, and saw the said Allan Breck at a little distance from the house; and, upon the deponent's coming up to him, the said Allan Breck asked him, if any message had come for him, the deponent told him, that his uncle's son had come with five guineas, and some cloaths: that Allan Breck complained there was but little money, but hoped it would do his business: that the deponent told the said Allan Breck, he was afraid he would starve among the heather; and that he was not able to help him: that Allan Breck answered, he had no occasion for victuals, but wanted a drink very much; upon which the deponent went back to his house, and carried out some whey, or some milk and water, in a noggin, and the five guineas, and gave both to Allan Breck: that the deponent then went for the cloaths, which he also gave the said Allan Breck, which consisted of a blue long coat, red waistcoat, black breeches, a hat, some stockings and shirts: that the deponent told the said Allan Breck that the pannel and his son Allan were apprehended upon account of Glenure's murder; to which Allan Breck answered, that that was no more than he expected; but it would not signify much, as there could be no proof against them; but expressed some apprehension, lest Allan Stewart, son to the pannel, might be betrayed by his own tongue: that the deponent desired the said Allan, now that he had got all the necessaries he expected, to go about his business; and the said Allan Breck promised to do so, but told the deponent, that he must meet him, the said Allan Breck, next morning; that he must deliver the deponent the cloaths he, the said Allan Breck, had then on, to wit, the black short coat and trowsers shown to the deponent in the clerk's hands, in order to be kept by the deponent till he delivered them to

John Breck  
Maccoll

## James Stewart.

**John Breck  
Maccoll**

the pannel's wife: that the deponent promised to meet the said Allan Breck next morning, but did not see him; and when the deponent went out next morning, he found the said short black coat, trowsers, and the noggin in which the deponent carried the drink to the said Allan Breck, lying together in the place where the deponent parted with the said Allan Breck the night before; and found in one of the pockets of the said short coat the powder-horn now shown him, in the clerk's hands; and depones, that he has not seen the said Allan Breck since. Depones, That, in a conversation the deponent had with the pannel, as the deponent best remembers, about two years ago, mention being made of Glenure's being about to take on the management of the estate of Ardshiel from the said pannel, and thereby disabling the pannel from being of any service to Ardshiel's children, he heard the pannel say, he would be willing to spend a shot upon Glenure, tho' he went upon his knees to his window to fire it. Depones, That he heard a waif report in the country, that Ardshiel (attainted) had sent home a message, that he believed all his friends were dead, when Glenure was allowed to go on at the rate he did. Depones, That, upon the evening of the said Saturday the 16th day of May last, Katharine Maccoll, spouse to Hugh Maccoll in Koalishnacuan, told the deponent, that she had seen a man in the heugh of Corrynakeigh that day, at some distance, and was greatly frightened: that the deponent told her, there used to be bogles seen in that place, but she must take no notice of what she had seen, for fear of frightening the women of the town, and prevent them from attending their cattle in that part; and that the reason of telling her so, was for fear it would be known it was Allan Breck she saw. Depones, That, when he found the black short coat and trowsers he saw Allan Breck wear, upon Monday morning the 18th of May last, he hid them; and that, after he, the deponent, had been sometime prisoner at Fort-William, he came along with a party of soldiers, to whom he showed the place he hid the said cloaths; and the said party took the said cloaths out of the place he had hid them in, in the deponent's presence, and carried them to Fort-William. *Causa scientiæ patet.* And this is truth, as he shall answer to God; and depones he cannot write.

ARCH. CAMPBELL. JA. FERGUSON.

**Hugh  
Macclean**

HUGH MACCLEAN barber in Maryburgh, aged twenty seven years, married, sworn, purged, and examined *ut supra*, depones, That being a barber to his trade, and one day being called by the pannel to the prison to shave him, which he thinks was upon a Saturday, the pannel asked him, what news he heard in the town, to which the deponent answered, that he heard that he, the pannel, was to be carried to Edinburgh on the

## Evidence for Prosecution.

Monday following: whereupon the pannel said, that that was a matter gave him no concern, and wished it had happened sooner, and was afraid of nothing but that his servants might be inticed to take money, and turn against him; and desired the deponent, as from him, to tell his servants to say nothing but truth, to keep their minds to themselves, and he would take care of them; and accordingly the deponent delivered the pannel's message, in his own words, to two of his servants who were then in separate custody in the same prison; and that they were both of the name of Maccoll. Depones, That, at this time, the pannel gave the deponent a shilling, and said when he came again to shave him, he would give him more; but that he never got more from him than the said shilling. Depones, That from the pannel he went to his son Allan also to shave him, to whom he told the commission his father had given to be delivered to the servants; and the said Allan gave him half a crown. *Causa scientiæ patet.* And this is the truth, as he shall answer to God; and depones he cannot write.  
JA. FERGUSON.

THOMAS BAIRD, serjeant in General Pultney's regiment of foot, aged thirty-two years, married, witness cited, solemnly sworn, purged of malice and partial council; and, having been called into court, before closing of a former deposition, in order to open a bundle containing two short coats, and a pair of trowsers, to be shown to a preceeding witness during his examination; and, after opening the said bundle, was removed, and called in again; and, being solemnly sworn and interrogate, depones, That, about the beginning of July last, to the best of the deponent's remembrance, he was sent with a party of soldiers, and a guide along with him, whose name, he thinks, was John Breck Maccoll, to a place computed of above ten miles distance from Fort-William over Lochleven; but, after passing the loch, their guide carried them two miles down the side of the loch, and up to the top of a rock, and out of a clift in the rock, the guide took a short black coat with silver buttons, and a powder horn in the pocket, and a pair of trowsers, and gave them to the deponent; and the deponent carried them to Fort-William, and delivered them to Colonel Crawford. Depones, That one of the black coats, with the powder horn and trowsers, that the deponent took out of the pocket as above mentioned, are the same that his guide delivered to him, and which he delivered to Colonel Crawford, as above deponed. *Causa scientiæ patet.* And this is the truth, as he shall answer to God.

THOMAS BAIRD. P. GRANT.

## James Stewart.

### Evidence for the Defence.

**Hugh Stewart**

HUGH STEWART residenter in Edinburgh, aged thirty and upwards, married, being sworn, purged and examined *ut supra*, depones, That he knows Allan Breck Stewart to have several times gone to France, and returned again to this country; particularly that he went to France in the 1747, and returned to Scotland in December 1749; returned to France in May 1751, and came back in February 1752; and, when in this country, he was in use to lodge at the deponent's house in Edinburgh: that he observed him to be afraid to be seen abroad, and kept at home in the day time, and went abroad under the cloud of night,\* for which he gave this reason to the deponent, that he had been a soldier in Colonel Lee's regiment, from which he had deserted, and was afraid to be discovered. And being interrogate, depones, That, when Allan Breck went abroad, as has been said, in May 1750, he owed the deponent a guinea, and, being run short of money, he drew a bill on the pannel for that sum, whereof he acquainted the pannel some time he thinks in July, and some time in August he received the money by Maccoll the Appin carrier; and, by the same carrier, sent the pannel the bill upon him. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

HUGH STEWART. JA. FERGUSON.

**Duncan Stewart**

DUNCAN STEWART of Glenbuckie, aged twenty seven years, unmarried, sworn, purged and examined *ut supra*, depones, That he was acquainted with Allan Breck Stewart; and that, at any time, when he came from France to this country, he had no fixed residence to the deponent known, but went about among his friends and acquaintances: that, when he came last to Scotland, his dress was a long blue coat, a red waist-coat, black breeches, and a feathered hat: that, in March last, when he was at the deponent's house, he was in that dress; but, at other times, he has seen him in a different dress, particularly in April last at Glenenty, which was the last time he saw him; his dress was, a black short coat with clear buttons, a tartan waist-coat, trowsers, and a bonnet, and, above all, a dun-coloured great coat. Depones, That he remembers that, upon one occasion, while Allan Breck was at his house, being the first time he came, he, for two days, to the deponent's certain knowledge, wore a short blue coat of the deponent's, which the deponent, at his desire, lent him; and whether he

\* Hugh Stewart lived beside the Fountain Well, in the immediate neighbourhood of John Knox's house, then in the centre of domestic and business activities in the Scottish capital.



James Stewart's House at Acharn.

(A few years ago the old roof fell in and a galvanized iron one, shown above, was substituted.)



## Evidence for Defence.

wore it any more than two days, of the ten days he at that time Duncan  
staid at the deponent's house, the deponent does not know, Stewart  
not having been at home all the time. *Causa scientiæ patet.*  
And this is truth, as he shall answer to God.

DUN. STEWART.    JA. FERGUSON.

DUNCAN FERGUSON, servant to Duncan Stewart of Glenbuckie, Duncan  
aged twenty nine, unmarried, sworn, purged and examined FERGUSON  
*ut supra*, depones, That, about the 20th of April last, he saw  
Allan Breck Stewart at the house of Branachile, the house of  
the former witness; at which time he was dressed in a short  
black coat with clear white buttons, a tartan vest, trowsers,  
tartan hose, and bonnet. Depones, That he staid there two  
nights, and went from thence, as the deponent was informed,  
to Glenfinlas, and staid a night there. Depones, That the  
deponent also saw him at Glenbuckie's house in March last,  
at which time he was dressed in a blue coat, red vest, and  
feathered hat. *Causa scientiæ patet.* And this is truth, as  
he shall answer to God; and depones he cannot write.

P. GRANT.

DUNCAN STEWART in Glenfinlas, aged thirty two years, married, Duncan  
sworn, purged and examined *ut supra*, depones, That, one night, Stewart  
between the 20th and 23d of April, the deponent saw Allan  
Breck Stewart at Glenfinlas, and was dressed in a black short  
coat, and white clear buttons, trowsers, and a bonnet, and had  
on a dun big coat above the short coat. *Causa scientiæ patet.*  
And this is truth, as he shall answer to God.

DUNCAN STEWART.    P. GRANT.

KATHARINE MACINNES late servant to Alexander Stewart of Katharine  
Ballachelish, aged twenty two years, sworn, purged and ex- Macinnes  
amined *ut supra*, by Mr. Archibald Campbell of Stonefield,  
sworn interpreter, depones, That in the evening of the 14th  
of May last, the deponent saw Allan Breck Stewart at a goat-  
house in the moor of Ballachelish after Glenure was killed;  
and that Allan Breck then asked her, what was the occasion  
of the stir in the town, and that she told him, Glenure was  
murdered; and further asked her, who might have committed  
the murder, and that she told him, she did not know; and  
that the said Allan further desired the deponent to tell Donald  
Stewart in Ballachelish to go to the pannel, and desire him  
to send the said Allan money; and that she delivered this  
message to Donald Stewart that same night. Depones, That  
she told the said Donald Stewart where she saw Allan Breck;  
but that she did not tell him to go to the said Allan, nor did  
he desire her. *Causa scientiæ patet.* And this is truth, as  
she shall answer to God; and depones she cannot write.

ARCH. CAMPBELL.    P. GRANT.

## James Stewart.

John Stewart

JOHN STEWART younger of Ballachelish, aged twenty six, unmarried, sworn, purged and examined *ut supra*, depones, That, the day after the murder of Glenure, the deponent was at the pannel's house, who, after twelve o'clock of the day, told the deponent, that he had had a message that morning from Allan Breck by Donald Stewart, to send him money; but does not remember, whether the pannel told him the place where he was directed to send it, and the pannel told the deponent, that he was resolved to send him money. Depones, That, the last day of December last, the deponent was in company with the decess'd Glenure, an uncle of Ardshiel's, and the pannel and Mr. Campbell of Ballievolan, when, after the company had drunk very hard, and were all drunk, some high words arose between Glenure and Ardshiel's uncle, and they were like to come to blows, which both of them attempted; but the deponent, orce and again separated them: that Ardshiel's uncle happened to go out of the house, as did also the pannel, and the deponent called to the people without not to let them in again, because they were drunk: that the pannel had invited Glenure next day to his house, which Glenure had accepted of, and therefore the pannel pressed to come in again to the house to renew the invitation, and take his leave of Glenure; but the deponent would not allow him to come in, and undertook to make his excuse to Glenure: that the deponent, coming into the house, found Glenure standing with a drawn hanger in his hand; and the deponent asked, what he meant by that, and Glenure answered, that he should not allow him to be mobbed there; upon which the deponent assured him he should not be mobbed there, and then Glenure threw the hanger upon the bed: that the deponent went home with the pannel, and next day Glenure came there before dinner, and dined, and made apologies mutually for what passed the night before; and that Mr. Campbell of Ballievolan dined there also.

And being interrogate for the pursuers, depones, That the deponent was in Edinburgh in August last, and was present at consultations of the pannel his lawyers and agents, touching his defence. *Causa scientiæ patet.* And this is truth, as he shall answer to God.

JOHN STEWART. P. GRANT.

Alexander  
Stewart

ALEXANDER STEWART in Auchindarroch, aged about eighteen, unmarried, witness cited, sworn, purged and examined *ut supra*, by Mr. Archibald Campbell of Stonefield, sworn interpreter, depones, That, to the best of his knowledge, he saw Donald Stewart in Ballachelish and the pannel together, upon the marches between Aucharn and Auchindarroch, in the morning of the 15th of May; and that he himself was at the time digging ground, with the other tenants of the town.

## Evidence for Defence.

*Causa scientiæ patet.* And this is truth, as he shall answer Alexander Stewart to God.

ALEX. STEWART. ARCH. CAMPBELL. P. GRANT

ALEXANDER STEWART of Ballachelish elder, witness cited, sworn, purged and examined *ut supra*, depones, That the deponent was with Allan Breck Stewart's father a considerable time before his death; but, after he had contracted the indisposition whereof he died, he told the deponent, that he intended to leave the care of his children, and of his affairs, to Ardshiel and the pannel: that the deponent knows they accordingly took upon them the management, tho' he believes the nomination was only verbal, and not in writing. *Causa scientiæ patet.* And this is the truth, as he shall answer to God.

ALEX. STEWART. P. GRANT.

JOHN STEWART tenant in Auchnacooan, aged fifty two years, married, witness cited, sworn, purged and examined *ut supra*, depones, That Allan Breck's father, as he believes, named the pannel to be tutor to his children, and no other tutor; and the cause of the deponent's belief is, because he saw the pannel take the management of their affairs upon him. *Causa scientiæ patet.* And this is the truth, as he shall answer to God.

JOHN STEWART. P. GRANT.

JOHN FLOCKHART, writer in Edinburgh, aged thirty and upwards, married, witness cited, sworn, purged and examined *ut supra*, depones, That being shown a letter\* by the pannel to Mr. John Macfarlane writer to the signet, dated the 19th of May last, depones, That that letter came to the deponent's hands at Edinburgh by course of post the 24th of May last, and the deponent being to go for Perth next day, he gave the letter to Alexander Hart, clerk to Mr. Macfarlane, to be delivered to his master; and knows not whether any thing was done by Mr. Macfarlane pursuant to that letter. *Causa scientiæ patet.* And this is the truth, as he shall answer to God.

JO. FLOCKHART.

And, after closing the oath, being further interrogate for the pannel, depones, That there was no other letter accompanying the one before mentioned. And this is also truth, as he shall answer to God.

JO. FLOCKHART. P. GRANT.

JOHN CAMERON of Strone, aged twenty five, married, witness cited, and sworn *ut supra*, depones, That, about a year ago, being in company with some of the tenants of Rannoch, in a house in Rannoch, a man came unto them, whom they called Serjeant More Cameron, whom the deponent never saw before, nor since: that the tenants were complaining of Glenure for

\* See p. 211.

## James Stewart.

**John Cameron** his hard usage of the tenants of Ardsziel; and the said Serjeant More said, that, if he met him in the high way, he would shoot him. *Causa scientia patet.* And this is the truth, as he shall answer to God.

JOHN CAMERON. P. GRANT.

**Ewan Cameron** EWAN CAMERON servant to John Cameron of Strone, aged twenty years, unmarried, witness cited, sworn, purged and examined *ut supra*, by Archibald Campbell writer in Inverary, sworn interpreter foreaid, depones, That he had occasion to be in Rannoch harvest last: that he saw there a man that was called Serjeant More Cameron, whom he never saw before, or since. Depones, That he saw the man called Serjeant More in a house, but does not know the name of the town, or the name of the man to whom the house belonged, the deponent having never been in Rannoch but that one time. Depones, That he heard the said Serjeant More say, That, if he, the said Serjeant More, met with Glenure, he did not care tho' he should be up-sides with him; but had no reason for saying so, he having heard no more of his discourse. Depones, that the deponent was then servant to the former witness, and was then in Rannoch attending him. *Causa scientia patet.* And this is the truth, as he shall answer to God; and declares he cannot write.

ARCH. CAMPBELL. P. GRANT.

Then the procurators for the pannel declared their probation to be concluded.

The prosecutors caused to be read, in presence of the jury, the writings produced by way of evidence for them; and the pannel's counsel caused to be read, in presence of the jury, the writings produced for him.

### Productions for the Prosecution.

COMMISSION GRANTED BY THE BARONS OF HIS MAJESTY'S EXCHEQUER TO COLIN CAMPBELL OF GLENURE, ESQ., TO BE FACTOR UPON THE LANDS AND ESTATE OF CHARLES STEWART, LATE OF ARDSHIEL, &C., DATED 23RD FEBRUARY, 1748-9.

*Not now available, as explained in Prefatory Note.*

INSTRUCTIONS TO COLIN CAMPBELL OF GLENURE, ESQ., FACTOR ON THE FORFEITED ESTATE OF ARDSHIEL, &C.

Exchequer Chambers,  
25th July, 1751.

**Glenure's  
Instructions.**

You are on no account to set any of the farms under your management to Cameron of Fasifern or to John Macclachlan of Greenhall.

## Declarations.

You are never to give any power of subletting to any tenant to whom you give a lease. Glenura's Instructions

You are to let all your farms by public call or roup; and one express article shall be in the roup—that no person, though the highest offerer, shall be preferred, unless he go voluntarily before a Justice of the Peace and take the oath of allegiance.

You are on no condition whatever to set a farm to any of the friends of the forfeiting person.

By order of the Barons.

D. MONCRIFFE, Secretary.

*Memorandum.*—If the judicial rent can be got for any of the farms in the estates under your management you have no occasion to set them up to a public roup.

D. M.

PRECEPT OF REMOVING AND EJECTION UPON A DECRET AT THE INSTANCE OF THE SAID COLIN CAMPBELL AGAINST JOHN COLQUHOUN AND OTHERS, TENANTS OF THE ESTATE OF ARDSHIEL, BEFORE THE SHERIFF OF ARGYLL, DATED THE 13TH APRIL, 1752.

*Not now available.*

OFFICE COPY BILL OF SUSPENSION PRESENTED TO THE COURT OF SESSION BY THE SAID TENANTS, COMPLAINING OF THE ABOVE DECRET, WITH SIST THEREUPON, DATED 18TH APRIL, 1752, AND PRINCIPAL DELIVERANCE THEREON OF THE LORD HAINING ORDINARY ON THE BILLS REFUSING THE SAID BILL, DATED 5TH MAY, 1752, WITH COPY ANSWERS TO THE SAID BILL FOR HIS MAJESTY'S ADVOCATE AND THE SAID COLIN CAMPBELL, THE FACTOR.

*Not now available.*

JUDICIAL RENTAL OF THE ESTATE OF ARDSHIEL, AS GIVEN INTO THE EXCHEQUER BY MR. DAVID BRUCE, ONE OF THE GENERAL SURVEYORS, DATED 12TH SEPTEMBER, 1748, WITH ABSTRACT THEREOF.

*Not now available.*

THREE JUDICIAL DECLARATIONS BY THE SAID JAMES STEWART.

I.

At Fort-William, the 2d day of June 1752 years, in presence of George Douglas sheriff substitute of the sheriffdom of Inverness, sitting in judgment, compeared James Stewart in Aucharn, now prisoner at this place; who being judicially examined ane.t the matter under written, declares judicially, that Allan Breck Stewart, came to his house in the latter end

Accused

## James Stewart.

Accused of March, upon his coming from France; that he staid two nights there, when the declarant went to Edinburgh, leaving the said Allan at his house: that the said Allan came to the declarant's house in the month of April after being at Glenbuckie's and Rannoch; and that, upon Monday the 11th day of May last, the said Allan came to the declarant's house from Fasnacloich; and the declarant being called upon by Mr. Campbell of Airds to go to Keil, and having little conversation with the said Allan till his return, and no other after his return, than what was in the presence of the family; nor does the declarant remember, whether he supped with the said Allan that night or not; but rather thinks he did; or whether the said Allan was dressed in a long blue coat and hat, or in a black short coat with silver buttons: that the declarant thought himself concerned in drink that night, having drunk at the miller of Keil's house with the old piper, the young piper, the said miller, and old Duncan Maccombich, and his son Archibald: the declarant went away to Appin's house early upon Tuesday the 12th day of May last, and did not see Allan that day or since: that when the declarant was at Edinburgh, the said Allan carried a short black coat with silver buttons, belonging to the declarant, with him to Glenbuckie's and Rannoch, and wore it upon his return, when the declarant told the said Allan, that he wondered how his short coat fitted him, as Allan was a large man, and the declarant a little man: to which he answered, that it served him well enough: that, upon Monday's night the 11th of May last, the declarant's son, Charles, told him, he was to go to Glenco, Callart, and Fort-William; and that he did not see his said son from that night, till he saw him in this place, after that, he, the declarant, was made prisoner: nor is the declarant sure if his said son went to Glenco or Callart till Wednesday the 13th day of May last. Declares also, That his son Allan was at home on Sunday's night the 10th day of May last; but is not sure whether he was at home all that day or not. That there were no strangers at the declarant's house upon the said Sunday's night, or on the following Monday or Monday's night, nor yet on the Tuesday or Tuesday's night following, except the said Allan Breck and Fasnacloich's daughter upon the said Monday's night. Declares, That John Stewart younger of Ballachelish was at his house upon Wednesday's Night, and is sure that Ewan Roy Maccoll, brother to Appin's bouman at Coalisnacoon, supped at his, the declarant's, house, either upon the Wednesday or Thursday's night the 13th or 14th days of May last; and that the said Ewan Roy Maccoll was also at the declarant's house upon Saturday thereafter, in the forenoon, along with his sister, spouse to Ewan Maccombich padler in Cuil, and then paid the declarant ten pounds Scots, except seven shillings and two pence, for which the said Ewan

## Declarations.

Maccombich padler became debtor; which ten pounds Scots was in payment of the grass-meal of cattle; and that the said Ewan Roy Maccoll did then give to the declarant a list of debts due to him in the country, whereof twenty pounds Scots was to be applied towards payment of a debt due by the said Ewan to his said sister, as the declarant had the management of her effects in the country of Appin; and which sister's name is Christian Maccoll, and was last winter servitrix to Mr. Stewart of Ballachallan: that the declarant delivered some cattle to Duncan Stewart servitor to Glenbuckie, and Solomon Maccoll servitor to the declarant's son Allan Stewart, and John Maccoll now prisoner at Fort-William, at the marches betwixt Aucharn and Sallachan; and that the said Ewan Roy Maccoll was to meet them at Glenduror with cattle of his own that were to be sent south along with the declarant's; and that the said John Maccoll parted with them at a shealing called the Immerin; and that the declarant did not see the said Ewan Roy Maccoll since. And being interrogate, if he had any arms in his house, declares, That when he was made prisoner, he had a small fowling-piece and a broad sword, which broad sword was to be kept for the children of the deceased Allan Stewart of Cuil, till they were of age. Declares also, That the said Solomon Maccoll, formerly servant to Donald Stewart at Tayharnan, came home to his service on the 15th or 16th days of May last: that John Stewart in Auchnacooan came to the declarant's house upon the evening of the 14th day of May last, and staid there that night; and declares, that he did not send him any message, either that day, or the preceeding day, nor had he any business that the declarant knows of. Declares also, That, the afternoon of Glenure's murder, several of the tenants in the neighbourhood, particularly the tenants of Auchindarroch, and Duncan Stewart at Inshaig, and Robert Stewart the miller, came to the declarant, to know what they should do, or whether they should go near the corpse; and that he advised them to go; but that neither he nor his son Allan went there, because he understood that Ballieveolan and his sons were to be there; and that there were some chagrine betwixt him and them, they having taken the declarant's possession the year before, wherein he had a stock of cattle, viz., Glenduror, a part of the estate of Ardshiel: that when young Ballachelish was over night at the declarant's house as aforesaid, they had a conversation about the removal of the tenants from the estate of Ardshiel; the result of which was, that they should continue their possession, and take the hazard of the violent profits, unless they were forced out; and that he had conversations with old Ballachelish to the same purpose; and that he gave the same opinion to such of the said tenants as applied to him, but recommended to them to use no force in keeping their possessions: that the declarant had

## James Stewart.

**Accused** no written, but a verbal commission from the said tenants, to negotiate for them at law; nor did he receive any money from them; but that the tenants of Lettermore and Ardshiel and the miller promised to refund his expence for representing their case, particularly Dugald and John Maccombichs in Ardshiel. And being interrogate, if he had any conversation with the said Allan Breck concerning Glenure, the said Allan asked the declarant, if he heard that Serjeant More was come from France, or if he was in the country of Appin, to which the declarant answered, that he did not hear he was in Appin, but heard he was in Glenlive last year; whereupon the said Allan told the declarant, that serjeant More swore he would kill Glenure, because of the treatment he gave the tenants on the estate of Mamore, part of Lochiel estate. Declares also, That the said Allan Breck threatened, that he would challenge Ballieveolan and his sons to fight, whenever he met them, because of his removing the declarant last year from Glenduror, and being about to remove the other tenants this year from some other parts of the estate of Ardshiel; and that the declarant told him, then they would not fight him, as they would not consider him as their equal; and if he had come to the country to fight, he had better staid in France. And being interrogate, if he had any conversation with William Stewart merchant in Maryburgh, declares he had, about the expediency of the said tenants their keeping their possessions; and that it was the said William's opinion, that they should keep their possessions; and that their case should be represented to the Barons of exchequer; and that it was hard they should be turned out, until their case was stated. And being asked, if he had any conversation with Callart anent the removings? declares, he does not remember; but that commonly every body he saw asked him, what should become of the tenants of the estate of Ardshiel, to which he answered, he did not know till the term-day. This declaration is emitted before the said sheriff-substitute, place and date foresaid, before these witnesses, Colonel Howard, Colonel Crawford, Donald Campbell of Airds, and Colin Campbell of Carquhin, Esqrs.

JAMES STEWART.

GEORGE DOUGLAS, S.S.

G. HOWARD, *witness*

DONALD CAMPBELL, *witness*.

Co. CAMPBELL, *witness*.

## II.

**Accused** *Eodem die*, The said James Stewart, being re-examined, judicially declares, upon recollection, That it was upon Thursday the 14th day of May last, that his said son Charles went to Glenco, and not on Wednesday, as before mentioned; and

## Declarations.

that Callart was at the declarant's house upon Sunday's night **Accused** the 10th day of May last. Declares, That, before Glenure served the warnings against the tenants of the estate of Ardshiel, the laird of Appin proposed to accommodate some of them in land: that how soon the declarant heard of Glenure's murder, it came in his mind, that Serjeant Mor. had done it, because Allan Breck told him, that the said Serjeant swo. a bloody revenge against Glenure before the Serjeant came from France, upon account of Glenure's treatment of Lochiel's tenants, and his differing with John Cameron of Fassafarn, brother to Lochiel: that the declarant's reason for suspecting Allan Breck afterwards, was, because he left the country abruptly, without taking leave of him, as he expected; and if the said Allan was guilty of the said murder, he believes it behoved to be on account of the disturbance given to the tenants of the estate of Ardshiel; and knows no other. Declares, That he did set out for Edinburgh on Friday the 3d day of April last, was at Glenco that night, the 4th at Innerkennie, the 5th at Lanerick, the 6th at Annat, and called next day at Newton, and was that night at Mr. Wordie of Cambusbaron's house at St. Ninian's, called at Touch on the 8th, and got a letter from Mr. Seaton to Mr. David Moncrief, secretary to the Barons of exchequer; called at Mr. Wilson's house of Murray's-hall, and was that night at Mr. Foster of Dunivan's house, and got a letter from him to Mr. Patrick Haldane the solicitor; but did not deliver it, or the other letter, as he was told they would be of no consequence; and went to Edinburgh upon Thursday the 9th day of April last, where he continued for eleven days: that he left Edinburgh upon Sunday the 19th, was that night at Dunivan, called at Mr. Wilson's, and Mr. Wordie's, and was at Stirling at night; which place he left on the 21st; called at Mr. Dundas of Manner's house, Dunblain and Newton, and was at Annat's at night; upon the 22d came to Ballachallan's and staid there that night; came to Glenbuckie's the 23d, and staid there two nights; on the 25th came to Tayindrom; on the 26th came to Duncan Stewart's house in Glenco; and upon the 27th came home; that, upon the 25th, he called at Mr. Murray of Glenkernock: that, soon after the declarant came home, he gave notice to the tenants of Ardshiel, that he had procured a sist for them against the decreet of removing; and that, if they had a mind to continue their possessions, they were advised to go to Glenure and seek their possessions, and if he did not grant their desire, they should send for a notary, and go with him to protest against Glenure; and if they pleased, he would send for a notary, to which they agreed: that accordingly the declarant sent for Charles Stewart notary, and writ him a letter, signifying they had obtained a sist for the tenants of the estate of Ardshiel, and desired him to come to

## James Stewart.

**Accused** intimate the same to Glenure to the purpose above mentioned; and that the said Charles did accordingly come to the declarant's house at night, and the tenants came also next morning; and that the declarant told them in presence of the said Charles, that, if it was not their mind to proceed in that method, he would not desire them to do it, because he could not assure them of success; and that now they had the advice as it was given to him; and particularly remembers, that three of the tenants of Ardshiel met the notary at the declarant's house, but is not sure if old John Colquhoun, the fourth tenant in Ardshiel was there, but rather believes he was: that he was informed on Monday the 11th day of May last, by his son Charles, Allan Breck and Fasnacloich's daughter, that they heard Glenure was to go to Lochaber that day. Declares also, That he saw James Stewart younger of Fasnacloich at Glenco's house upon the 5th day of May last, who asking him what he had done at Edinburgh, the declarant told him, he had procured a sist for the tenants of Ardshiel's estate; and that he did not know what service it might be of, but that some people thought they might sit, and take the hazard of the violent profits till they had an opportunity of laying their case before the Barons of Exchequer: that at this time the declarant told the said James Stewart, that he wished some persons of understanding were present on the term-day, to see if there was law for ejecting them; and asked the said James, if he was to be in Duror about that time, who said he did not know: that when the said John Stewart of Ballachelish was at the declarant's house, he asked him, if he would be present with the tenants to see if there was law for turning them out, who said he would, if he did not go to Inverary. Declares also, That, in general, he recommended to every body not to make any disturbance, and particularly recommended to his own servants not to be present, not knowing what might happen if a mob of people gathered; nor did he intend to be present himself. This declaration is emitted judicially, place and date foresaid, before these witnesses, Colonel Howard, Donald Campbell of Airds, and Colin Campbell of Carwhin, Esqrs.

JAMES STEWART.

GEORGE DOUGLAS, S.S.

G. HOWARD, *witness.*

DONALD CAMPBELL, *witness.*

Co. CAMPBELL, *witness.*

### III.

**Accused** At Maryburgh, the 3d day of June, 1752 years, in presence of the said sheriff-substitute, compeared the said James Stewart, who, after having his former declarations fully read, recollects, that he was not a night at Annat. but called there

## Declarations.

on his way to Edinburgh, and so was a day sooner there than what's mentioned in his former declaration; and being interrogate, if Allan Breck, the declarant's son Charles, or Fasnacloich's daughter told him, when she came to his house upon Monday the 11th of May last, that Glenure had got the said sist removed, declares, they did not; but that one of them told him, he heard Glenure was to remove the tenants of Ardshiel, but which of them said so, he does not remember. This declaration emitted, place and date foresaid, before the said Donald Campbell of Airds, and Colin Campbell of Carwhin, Esqrs.

JAMES STEWART.  
GEORGE DOUGLAS, S.S.

DONALD CAMPBELL, *witness*.  
CO. CAMPBELL, *witness*.

### TWO JUDICIAL DECLARATIONS BY ALLAN STEWART, ELDER SON OF THE ACCUSED.

#### I.

At Maryburgh, the 3d day of June, 1752 years, in presence of the said George Douglas sheriff-substitute of the shire of Inverness, compeared Allan Stewart, son to James Stewart in Aucharn; who, being examined judicially, declares, That Allan Breck Stewart came to the declarant's father's house on Monday's afternoon the 11th day of May last, dressed in a long blue coat, red waistcoat, black breeches, tartan hose and a hat; and after being some time there, put off his blue coat and waistcoat, and put on a black short coat with silver buttons belonging to the declarant's father; and went that afternoon to work with the declarant's father's servants in covering potatoes: that the said Allan Breck staid that night, and was dressed next morning in his blue coat and red waistcoat, as the day before: that the declarant did not see him go away from Aucharn upon the 12th, the declarant being in the fields from the time he rose in the morning till twelve of the clock that forenoon, sowing barley, except once that he made a start home for more bear. Declares, That, upon the afternoon that the said Allan Breck came to Aucharn, as aforesaid, he told the declarant, that he heard in Glencrearan, that the tenants who had taken the lands of Ardshiel were to be at Glenduror on Thursday's night, in order to enter to the possession on Friday the 15th day of May last; and told him likewise, that he heard Glenure had come home, and had orders to remove the former possessors: that Archibald Cameron, cousin to Drumnasailly, came along with Fasnacloich's daughter, and the declarant's brother Charles, to his Father's

## James Stewart.

Allan Stewart house, upon the said 11th day of May last, and staid all night; the said Allan Breck having come by himself about two of the clock in the afternoon that day: that the declarant's father conversed with the said Allan Breck aside, upon his first arrival at Aucharn upon the said 11th day of May; but that the conversation did not last above five minutes or thereabouts; nor did the declarant hear what passed: that the declarant's father did not appear to be the least in drink upon his coming home upon the evening the Monday aforesaid, but told that Mr. Campbell of Airds had given the declarant's father and the tenants of Keil, three or four bottles of whisky; and that the declarant's father supp'd at home along with the said Allan Breck that night: that, upon Tuesday afternoon the 12th of May last, the declarant and the said Archibald Cameron, and Donald Macdonald brother to Glenco, went to the isle of Ballienagowan; and the declarant and the said Donald Macdonald returned in the evening to Aucharn; but the said Archibald Cameron went to his aunt's at Cuil: that, in the morning of the 13th of May last, the declarant went to Sallachan, where he saw John More Macilichatten, and delivered them a mare and a filly, and then returned home: and in the afternoon of that day went to Kintalline, in order to go to Tayphinst; but being informed by Donald Mackendrick the old piper at Keil, whom he met there, that young Ballachelish was to be at Aucharn that night, the declarant returned with the said piper, and went along with him to the moss: that accordingly Ballachelish younger came to, and staid at the declarant's father's house that night, and went next day to Appin's house: that the said Ewan Roy Maccoll, brother to Appin's bouman at Koalisnacoon, wrought at the declarant's father's peat-moss upon the said 13th of May last, and supped at the declarant's father's house that night, and believes he took his bed with Duncan Maccoll his uncle's son at Auchindarroch that night: that, upon the 14th of May in the morning, the declarant went up to Freichie, and returned by the houses of Glenduror, where he saw two women and spoke with one of them, to hinder the cattle to trespass on his father's grounds; and whilst the declarant was speaking to that woman, he saw a man passing at a little distance, who was inquiring for Glenure, as the said woman told the declarant, which man the declarant thereafter observed travelling on the road towards Auchindarroch: that the declarant came straight home from Glenduror, and continued at home till he went to Inshaig, along with his brother Charles and Fasnacloich's daughter, and continued there till the news of Glenure's murder reached his father's house, where he heard the first accounts of it, Glenure's servant being just gone, as the declarant was informed: that the declarant was at home

## Declarations.

all day the 15th of said May; only that he made a start to Allan Stewart Cuil, where he was in company with Duncan Stewart senior, and Duncan Stewart younger, his son, and Duncan Stewart at Inshaig. And being interrogate, what conversation passed betwixt him and his father, on his return home from Inshaig, his father told him, that Glenure's servant was there; and, upon the declarant's father's asking his news, he told him, the worst that ever he had; that his master was killed at Lettermore; and that his father asked, if it was by a shot, and that the servant answered, that it was; and that the said servant also desired his father to go and take care of the corpse; which he proposed to do, but that his wife would not let him; but that he sent for the tenants of Auchindarroch, and desired them to go to take care of the corpse; and that the reason that he the declarant did not go to take care of the corpse, was, because it did not at first occur to him; and that it was too late, and the rest of the people gone; yet it was clear day-light, but thinks the sun was set; and that the declarant's mother also hindered his going, and assigned for a reason, that if the friends of the decess'd were there, and had arms, they might in their passion, do hurt to him and his father; and that he was but a little time at home after his return from Inshaig, when he saw Glenure's servant returning from Glenduror, and passing towards Kintalline: that the declarant thinks his brother Charles went in the afternoon of the 14th of May last with Fasnacloich's daughter, and the said Archibald Cameron, and the declarant's sister, to Lagnaha, where they dined in Alexander Stewart senior his house, and afterwards came back to Aucharn, and then went to Inshaig as aforesaid. Declares, That he heard the said Ewan Roy Maccoll say, upon the 13th, two several times, that it was hard in Glenure to turn out the honest tenants of the Ardshiel estate, as they paid their rents well, and offered an augmentation of rent, and were willing to give obedience to the government; and that one of the times was after breakfast, when the people were together at the end of the declarant's father's house, going to the moss; but that his father was not present: that some of the tenants of the neighbourhood were there, as well as his father's servants; and that they generally talked in the same strain with the said Ewan Maccoll; and that the other time was after their returning from their work that evening at the declarant's father's house: that the declarant does not know what became of the said Ewan Roy Maccoll all Thursday said 14th of May last; but is positive that he came into the barn where the declarant was lying, that same night, about twelve of the clock, asking for a bed, which was refused him, but ordered to go and lie with the servants in another barn in Aucharn, meaning Dougal and John Maccolls, now prisoners

## James Stewart.

**Allan Stewart** at Fort-William: that the declarant saw the said Ewan Roy Maccoll at Aucharn upon the 15th of May in the morning, and saw him again at Cuil about twelve of the clock that day; and that they came together from thence to Aucharn, where they parted; and that the declarant does not remember if they had any conversation all that time about Glenure's murder. This emitted judicially, place and date foresaid, before these witnesses, Donald Campbell of Airds, and Colin Campbell of Carwhin.

ALLAN STEWART.

GEORGE DOUGLAS, S.S.

DONALD CAMPBELL, *witness.*  
Co. CAMPBELL, *witness.*

### II.

**Allan Stewart** *Eodem die*, The said Allan Stewart being re-examined judicially, and being interrogate whom he suspected guilty of Glenure's murder, declares, That he thought if Allan Breck did not soon cast up in the country, he was the most likely man to have done it: and further declares, that, in a conversation between him and his father, and others, they were of opinion, that the people of Ballachelish and Lettermore must have known who committed the murder at the time it happened: that, upon the Friday after the murder happened, he heard his father say, he did not doubt but he would be taken up upon suspicion of the said murder: that when the declarant's father was at Edinburgh, he expected a letter from him about what he was doing about the removings; which letter came to Aucharn in the declarant's absence, and was opened by James Stewart younger of Fasnacloich, and contained an account of what the declarant's father had done about the removings; and that he was about buying a bargain of meal. Declares, also, That he heard his father express his desire to young Ballachelish to be present when the new tenants came to take possession of the estate of Ardshiel; and that Donald Macintyre in Aucharn told him, that young Ballachelish had come back from Appin to Keil, in order to attend; but, upon hearing of Glenure's murder, returned to Appin: that the declarant's father told him he would not be present at the entering of the said new tenants; nor was the declarant resolved to be present himself; nor did his father desire him to go, or suspect him such a fool as to go: that he knows that the said Allan Breck Stewart lay with the declarant's brother Charles in a barn in Aucharn, upon Monday's night the 11th day of May last: that the declarant has a black short coat, with nine round silver buttons in the breast, two upon each haunch, whereof one is small, and it has no buttons on the sleeves or pockets; and that his father has also a black short coat, with silver buttons on the breast, and pockets, and has none upon

## Declarations.

the haunches or sleeves, to the declarant's remembrance: that <sup>Allan Stewart</sup> the said Allan Breck had no big coat on upon the 11th day of May last, when he came to Aucharn, nor had he any big coat of his own that the declarant knows of; for the said Allan borrowed the declarant's big coat, when he came to Rannoch: that, in a conversation the declarant had with old Ballachelish on the Sunday before Glenure's murder, Ballachelish then told the declarant, that the man that had taken the ferry of North Ballachelish, came there with his boat, and was refused to enter to the possession by the tenants, who thought they had as good a right to the ferry as to the land: that thereupon the ferryman drew his boat, and went to Glenure, the tenants being resolved to keep their possessions for the year; and that Ballachelish said, that the tenants of the Ardshiel estate had as good a title to sit, as the tenants of Ballachelish, if the suspension was not discussed; and that it was a cant word through the country, that the tenants might sit, since the worst of it would be paying the violent profits. Declares also, That he has a gun and broad sword: that he left the gun in his father's brewhouse, and the sword he gave to John Maccoll, his father's servant, that's prisoner at Fort-William: that John Roy Stewart, nephew to Fasnacloich, lay in the barn with the declarant upon Tuesday's night the 14th day of May last; and that John Stewart in Auchnacloan lay in the same barn with the declarant's brother Charles, being the night that the said Ewan Roy Maccoll came to look for a bed there. This judicial declaration, emitted in presence of the said sheriff-substitute, place and date foresaid, before these witness, the right honourable the Lord Bury, Colonels Howard and Crawford, Donald Campbell of Airds, and Colin Campbell of Carwhin.

ALLAN STEWART.

GEORGE DOUGLAS, S.S.

DONALD CAMPBELL, *witness.*

CO. CAMPBELL, *witness.*

### FIVE JUDICIAL DECLARATIONS BY CHARLES STEWART, SECOND SON OF THE ACCUSED.

#### I.

Charles Stewart, son to the said James Stewart in Aucharn, <sup>Charles Stewart</sup> being solemnly sworn and examined, depones, That, upon Tuesday the 5th day of May current, the deponent and the said Allan Breck Stewart went from the deponent's father's house, where the said Allan had been, on and from the 1st current, (except that he was Saturday's night at Cuil) and staid at Appin's house on Tuesday's night, were Wednesday's night at Auchnacloan, Thursday's night at Auchauran's, Friday, Saturday and Sunday's night at Fasnacloich's, and came on

## James Stewart.

**Charles Stewart** Monday the 11th current to his father's house: that the dress the said Allan wore all this while, was a long-bodied blue coat, red waistcoat, black breeches, a hat with a black feather and tartan hose, with a big coat dun coloured; in which very dress, and with which big coat, he came along with the deponent to his father's house upon the 11th current, continued there that night, and the deponent and he lay together: that he rose before the deponent on Tuesday the 12th current, but that the deponent was up before he left his father's: and that as he was going away, which was about 8 or 9 of the clock in the morning, was told by him he was going for Glenco: that then he had on the whole of the same dress as above described: that the deponent accompanied him to Kintalline, and did not part with him any where on the road: that they passed through Auchindarroch and Lagnaha, and spoke with some people as they went along, particularly Alexander Stewart in Lagnaha and Alexander Stewart his son: that the blue coat Allan wore had yellow metal buttons: that the deponent and him parted at Kintalline after the deponent asked John Breck Maccombie for ale there; and this is truth as he shall answer to God.\*

CHARLES STEWART.

ARCH. CAMPBELL, S.D.

### II.

**Charles Stewart** Charles Stewart son of the said James Stewart in Aucharn, being re-examined, judicially acknowledges, That Dugald Maccoll former declarant told the said Charles Stewart, that there were arms in his father's house, which he had hid; and this judicial acknowledgement is signed this 23d day of May, 1752 years, before these witnesses, Donald Campbell of Airds, and James Campbell writer in Inverary, writer hereof.

CHARLES STEWART.

DONALD CAMPBELL, *witness.*

JA. CAMPBELL, *witness.*

### III.

**Charles Stewart** Thereafter the said Charles Stewart judicially owns, That, upon the 12th day of May current, the black short coat, with silver buttons then wore by Allan Breck Stewart, was given to him by the declarant's father; and that he had got the plaiden trowsers, then wore by him, from the declarant's father, or brother Allan; and this is also signed, place and date aforesaid.

CHARLES STEWART.

ARCH. CAMPBELL S.D.

DONALD CAMPBELL, *witness.*

JA. CAMPBELL, *witness.*

\* This declaration is undated, but it seems to be that mentioned in the Inventory as emitted on 22nd May, 1752.

## Declarations.

### IV.

At Tannaheinsaig the 25th day of May, 1752 years, the said Charles Stewart being re-examined by the said sheriff-depute, judicially declares, That the said Allan Breck Stewart had on a black short coat with round silver buttons, upon the thirtieth day of April last, when he came to the declarant's father's house in Aucharn from Rannoch: that the declarant left the said Allan Breck at his father's house, he himself having, upon the first day of May current, gone to Glenure along with the tenants of Ardshiel and Charles Stewart notary, to be a witness to the intimation of the sist they had obtained against the decret of removing; and that, upon his return that evening, he found the said Allan Breck at his father's, and was then dressed in a black short coat and round silver buttons, and then observed, that the said coat was lined with red in the breast and skirts; and that the said Allan told him, that he had got the said short coat from the declarant's father; but does not remember when it was he told him so. Declares also, That the said Allan Breck Stewart had on blue and white trowsers when he came from Rannoch to his father's house, on the 30th day of April; and had them likewise on, on the 2d day of May current, when he went to Cuil in Appin; and that he wore the same dress upon the 3d and 4th days of May current: that the said Allan did put on his side blue coat on the 5th day of May current, when he went to Appin's house: and likeways declares, that he saw Allan Breck's blue coat, upon the 13th current, lying upon a trunk in the room upon the right hand of the entry of his father's house: that the said Allan had on the said black short coat, when at breakfast at the declarant's father's house, upon the 12th day of May current, but had on no jocky-coat then. This declaration is judicially signed, place and date foresaid, before these witnesses, Donald Campbell of Airds, and Colin Campbell of Carwhin.

CHARLES STEWART.

ARCH. CAMPBELL, S.D.

DONALD CAMPBELL, *witness.*

CO. CAMPBELL, *witness.*

### V.

At Maryburgh, the 4th day of June 1752 years, in presence of the said George Douglas sheriff substitute aforesaid, appeared Charles Stewart, son to James Stewart in Aucharn, being re-examined judicially, declares, That he was at home all day of the 14th of May last, and that he dined with his father, mother, brother, sister and Fasnacloich's daughter, and after dinner went to Auchindarroch, and there conversed with Duncan Maccombie, Duncan and John Maccolls, and others that

## James Stewart.

Charles  
Stewart

were covering potatoes, and desired Solomon Maccoll to go with Fasnacloich's daughter to Ardnamurchan, but he would not go: that Fasnacloich's daughter and the declarant's sister went along with him to Auchindarroch, and returned before him to Aucharn, the declarant having staid a quarter of an hour after them, to persuade the said Solomon to go to Ardnamurchan, and then followed them directly to Aucharn; and did not go nearer Lettermore that day than the place where the people of Auchindarroch were covering potatoes; and, in an hour thereafter, went with Fasnacloich's daughter and the declarant's brother Allan, and sister, to Inshaig, where he received the news of Glenure's murder, from John Maccoll now prisoner at Fort-William; being sent there, by the declarant's father, to desire him and his brother Allan to come home; but that the brother was gone a little before the said John Maccoll came. Declares also, That he saw Ewan Roy Maccoll, brother to Appin's bouman at Koalisnacooan, at the declarant's father's house, upon the evening of the 14th day of May last before they lighted candles, and told he had come from Glenco that day; that he, afterwards, that night, came into the barn where the declarant was lying with his uncle John Stewart, looking for a bed, and was directed to lie with the servants in the other barn in Aucharn. Declares, that upon his return from Inshaig with the said John Maccoll prisoner, That the declarant ask'd him where Glenure was murdered, what way it was done, and if any person was seen by the place, and that the said John answered, that it was done in the wood of Lettermore; whether it was South or North of the houses he could not tell; that it was by a shot, and that there was a man or two seen near the place, and this is all the declarant remembers of the conversation upon that head; and that upon his coming home, he heard his father desire the people of Auchindarroch to go and take care of the corpse; and that his father proposed to go himself, but that his wife would not let him; and, at the same time, heard his father say that he would be suspected of the murder, as he was taking so much part with the tenants against Glenure the factor: that he heard Ewan Roy Maccoll say, upon the 13th day of May last, that he wondered that Glenure was removing the tenants that paid their rent well, and were willing to qualify to the government: that he observed his father and the said Ewan Roy Maccoll have several conversations aside about that time. This declaration emitted judicially, place and date foresaid, before these witnesses, Donald Campbell of Airds, and Colin Campbell of Carwhin, Esqrs.

CHARLES STEWART.  
GEORGE DOUGLAS, S.S.

DONALD CAMPBELL, *witness.*  
CO. CAMPBELL, *witness.*

## Declarations.

### THREE JUDICIAL DECLARATIONS BY MRS. STEWART, WIFE OF THE ACCUSED.

#### I.

Margaret Stewart, spouse to James Stewart in Aucharn, Mrs. Stewart being solemnly sworn and examined, depones, That Allan Breck Stewart came to her house upon Monday immediately before Glenure's murder, dressed as mentioned in the last deposition, and with a big coat of the same colour; that he staid all night, and went away next day about eight or nine of the clock in the forenoon, dressed in the same habit; and, at his taking leave of the deponent, asked her, if she had any commands for Rannoch, that, to the best of her knowledge, he came by himself, and went away by himself: and this is the truth, as she shall answer to God; and declares she cannot write.\*

ARCH. CAMPBELL, S.D.

#### II.

The said Margaret Stewart, spouse to James Stewart in Mrs. Stewart Aucharn, being re-examined, judicially declares, That her husband, James Stewart, was at home, and lay in the same bed with her on Monday's night the 11th of May current: and this is also truth, as she shall answer to God; and declares she cannot write.\*

ARCH. CAMPBELL, S.D.

#### III.

The said Margaret Stewart, spouse to the said James Stewart Mrs. Stewart in Aucharn, being re-examined, declares, That the black short coat now shown to her, is the same, which was brought from her house upon Saturday's evening the 23d current, and belongs to Allan Stewart her son: that her husband has had no black coat for three quarters of a year past; and that the last black short coat he had, was given by him to John More Maccoll; and that the round silver buttons, which are upon the coat now produced, were formerly upon the coat given to the said John More Maccoll. This judicial declaration is emitted this 25th day of May, 1752 years, before these witnesses, Colin Campbell of Carwhin, and Donald Campbell of Airds; and the declarant declares she cannot write.

ARCH. CAMPBELL, S.D.

CO. CAMPBELL, *witness.*

DONALD CAMPBELL, *witness.*

The said Margaret Stewart also owns, that there was a gun in her husband's house this spring which she saw her son Allan go out with once or twice to kill black cocks. This

\* These two declarations seem to have been emitted on 22nd May, 1752.

## James Stewart.

Mrs. Stewart judicial declaration is also signed, place and date aforesaid, and before the witnesses above named and designed.

ARCH. CAMPBELL, S.D.

DONALD CAMPBELL, *witness*.

### TWO JUDICIAL DECLARATIONS BY ELIZABETH STEWART, DAUGHTER OF THE ACCUSED.

#### I.

Elizabeth Stewart

Elizabeth Stewart, daughter of the said James Stewart in Aucharn, being solemnly sworn and examined, depones, conform to her mother's deposition in every thing, only that she is positive that Allan Breck Stewart came all alone to Aucharn, upon Monday immediately before Glenure's murder, she having seen him come there: and this is truth as she shall answer to God: and declares she cannot write; and adds, that Solomon Maccoll, her father's servant, went off for the south country upon Saturday the 16th current.\*

ARCH. CAMPBELL, S.D.

#### II.

Elizabeth Stewart

The said Elizabeth Stewart her daughter,† re-examined, judicially owns, That her father was at home on Monday's night the 11th day of May current: and this is also truth, as she shall answer to God; and declares she cannot write.\*

ARCH. CAMPBELL, S.D.

LETTER‡ ADDRESSED BY ALLAN STEWART, SON OF THE ACCUSED, TO DUNCAN STEWART OF GLENBUCKIE, DATED 1st APRIL, 1751.§

Allan Stewart

Now I am sorry to acquaint you, affairs is going quite wrong upon this estate of your cousin's; Glenure wants Ardshiel and Lettermore in his own hands, and more rents for our tenement, and the carriage to himself. How far these things will take place, God knows! The man makes the whole noise, is

\* These two declarations seem to have been emitted on 22nd May, 1752.

† Mrs. Stewart's daughter.

‡ The entry of this letter in the Inventory of Productions contains the statement, "Part of the beginning torn off."

§ It is a remarkable fact that though there is a record (p. 153) that this letter was shown to Alexander Stewart of Invernahyle in order that he might identify it as the writ of the accused's son, and though Invernahyle's opinion of its authenticity was indefinite, there is no record that it was shown to Glenbuckie for identification when he was in the box as a witness for the defence. This raises an interesting speculation. Were the Crown Counsel anxious towards the end of the proceedings to avoid emphasising the fact (as to which all modern critics are agreed) that there was just as much evidence against the son Allan as against the father?

## Declarations.

Ballieveolan, upon account of our keeping John More; for he Allan Stewart  
 does not deny but what he offers more rents for Glenduror, and  
 gives this as his reasons. However it shall be a dear glen to  
 them or they shall have it. All you heard about the country  
 is true: I go, in a few days, to Kingailoch for the stallion,  
 which stands us eight guineas; he wants to harrow him this  
 spring; and to get him broke for the saddle again harvest.  
 Fasnacloich has made the purchase for himself. You'll not  
 neglect to send all the money you can in a very short time,  
 as money never was scarcer in this country. Kingailoch has  
 got money; so that we are sure of his cows. Malcolm  
 Livingston has sent for more money; for he employed what he  
 got. I shall refer the whole history of the country till I  
 have the pleasure of seeing you. I beg you'll not neglect  
 sending a servant soon, with as much as possible: let nothing  
 stop him. Neglect not about your brother. No more, but my  
 compliments to Miss Jeany, Sandy, and little Donald, is all  
 from, dear cousin, I am your affectionate cousin,

ALLAN STEWART.

Dated Aucharn, April the 1st, 1751.

Maryburgh, 4th June, 1752 years. This letter was found  
 among James Stewart in Aucharn's papers, and shown this day  
 to Allan Stewart his son, who refuses it to be his hand-writing,  
 in presence of Colin Campbell of Carwhin, and Donald Campbell  
 of Airds Esqrs; two of his majesty's justices of peace for  
 Argyleshire.

ARCH. CAMPBELL, S.D.

DONALD CAMPBELL, *witness.*

CO. CAMPBELL, *witness.*

The above letter was addressed on the back, "To Duncan  
 Stewart of Glenbucky, at Brenchyle."

LETTER FROM THE ACCUSED TO CHARLES STEWART, WRITER IN  
 ACHINTOUR, DATED 27TH APRIL, 1752.

Dr Cous:

Yesternight I arrived here after a very troublesome Accused  
 jaunt. And as the Barons could not be got together put it out  
 of my power to procure an order for our factor. But Baron  
 Kennedy, who I found very kind, and seemed to sympathise  
 with the tenants' case, gave it as his private opinion that they  
 should sit their possessions for this year; and that all justice  
 would be done them; and thought they should take a protest  
 against the factor's proceedings in a body: I mean the Mamore  
 and Appin tenants. The same advice I had from all I advised

## James Stewart.

**Accused** with, who were not a few; and all were of the same mind, that the tenants had a good chance once their affair came before the Barons. So that 'tis necessary you immediately start down, and bring the Mamore tenants along with you; and the tenants on this side shall go along; that both may enter their protest at the same time. Herewith you have a letter from Mr. John Flockhart, and a sist *sine die* which I hope will protect for some time. As the time is short, hopes you'll lose no time. And am till meeting, and always

Dr C. Your own &c.

JA. STEWART.

Inver, Monday,  
April 27, 1752.

Addressed on back thus, "To Mr. Charles Stewart, writer at Achintour."

### LETTER FROM THE ACCUSED TO CHARLES STEWART NOTARY, DATED 14TH MAY, 1752.

Dear Charles,

**Accused** Not knowing of your return from Mudart, sent for your father Tuesday's afternoon; but the rascal I sent, went not by Glencrearan that night, by which he missed the old man, who went a-fishing, as you'll see by the inclos'd, early that morning; which I reckon a very great misfortune. The next best I can think off, is, that you be here without fail this night, if you should hire a horse, as everything must go wrong without a person can act, and that I can trust. This is such a tie upon all the members of our family, that I'll press you no further, but do depend on seeing you once this night; and am your own, &c. dear cousin,

JAMES STEWART.

Aucharn, May 14th eight o'clock morning, 1752.

*P.S.* As I have not time to write to William, let him send down immediately 8 l. sterling to pay four milk cows I bought for his wife at Ardshiel.

Addressed on the back thus, "To Mr. Charles Stewart at Auchintour. per express."

### LETTER FROM WILLIAM STEWART, MARYBURGH, TO THE ACCUSED.

Maryburgh 14th May 1752.

Dr Sir,

**William  
Stewart**

I send the bearer for the best ware, and my young beasts in Salachan; unless you keep by it (which I think you ought)

## Declarations.

and send some other body up with him, and let them carry the milk cows you bought for me. Let the filly be grazed thereabouts, waiting market. William Stewart

I find Glenure has a mind to eject the tenants; but they ought to be deaf to it, and, at all risques, keep possession; as they are in good hands, as it must end in exchequer; so that I beg they keep possession; as there will be no troops, they ought to repel force by force, and take their hazard of the consequence; as it can be no more than violent profits, which is often modified in inferior courts, besides the exchequer, who will insist for no such; their chief design being to have a set of peaceable tenantry, and a well paid rent; so that the people ought to be assured they shall be supported as far as law will, which no doubt must determine in their favours; and am, dear Sir, your own, &c.

WILLIAM STEWART.

Addressed on the back thus: "To Mr. James Stewart in Aucharn."

Endorsed on back thus: "Maryburgh the 5th day of June 1752. This is the letter relative to the declaration emitted this day before me, by William Stewart merchant in Maryburgh. GEORGE DOUGLAS, S.S."

LETTER, THE ACCUSED TO MR. JOHN MACFARLANE, W.S.,  
"PAPERING" ALLAN BRECK STEWART, DATED 19TH MAY, 1752.

Sir,

Just now had your favour, and am sorry these poor tenants should have made use of me for representing their grievance, as in all appearance, it has brought a great deal of trouble upon me; being carried here, and my son upon Sunday last, suspected to be knowing to the barbarous murder of Glenure, who was shot dead upon Thursday the 14th current, in a wood within two miles of my house. It is not pretended that I or my son were actors in this horrid action, as we both can be well attested; but alledges, it was a premeditated thing, to which I must have been knowing: but so far otherwise, that no man (I thank God) abhors the fact more, and would, if at liberty, do all in my power to bring it to light. There is one Allan Stewart, a distant friend of the late Ardshiel's, who is in the French service, and came over in March last, as he said to some, in order to settle at home; to others, that he was to go soon back; and was, as I hear, the day the murder was committed, seen not far from the place where it happened, and is not now to be seen; by which it is believed he was the actor; he is a desperate foolish fellow; and, if he is guilty, came to the country for that very purpose. He is a tall

## James Stewart.

**Accused** pock-pitted lad, very black hair, and wore a blue coat and metal buttons, an old red vest and breeches of the same colour. I would own myself under many obligations to any friend would discover him; am persuaded he is gone South, in order to embrace the first opportunity of going abroad. When at Edinburgh, he staid in Mr. Hugh Stewart's at the back of the Fountain-well;\* so begs, as you have any regard for my interest, recommend all that wish the country well to be in search of him. What makes my confinement very uneasy to me is, that this is the time of the year that my business would require my presence most; having bought cattle (wherein I yearly deal) in different countries, and taking grasings South for the cattle, which I must pay if I should never send a beast upon it; which I am afraid will be the case, if either my son or self be not admitted to bail, to put our affairs in order: so hopes you'll spare no pains in this, as Airds and Appin will bail me in any sum whatever.

Your return I'll expect in course of post; and am, with compliments to your lady and self, Dr Sir, your most humble servant,  
JAMES STEWART.

Fourt-William May 19.  
1752.

Addressed thus: "To Mr. John Macfarlane writer to the signet; in his absence to Mr. John Flockhart his principal clerk at his house in the Mint, Edinburgh."

Endorsed thus: "Inverary 22nd September 1752. This is the letter referred to in Colonel Crawford's oath of this date."

DRAFT LETTER BY THE ACCUSED AND DRAFT OF AN INSTRUMENT OF PROTEST AT THE TENANTS' INSTANCE RELATIVE TO THE SAID DECREE OF REMOVING AND SUSPENSION THEREOF.

*Not now available.*

THE GUNS AND CLOTHES PRODUCED BY THE PROSECUTION ARE ENUMERATED IN THE INVENTORY ATTACHED TO THE INDICTMENT (PAGE 57).

THE FOLLOWING TWO DISCHARGES FROM GLENURE TO JAMES STEWART WERE ALSO PRODUCED, THOUGH NOT NUMBERED WITH ORIGINAL INVENTORY:—

### I.

Received by me, Colin Campbell of Glenure, factor appointed

\* A house in the immediate neighbourhood of John Knox's house in the High Street of Edinburgh.

## Declarations.

by the Honourable the Barons of His Majesty's Exchequer in Scotland on the estate which formerly belonged to Charles Stewart of Ardsheall, from James Stewart, tenant in Auchindarroch, a part of said estate, for himself, and the other tenants of said estate of Ardsheall the sum of six hundred and eleven pounds one shilling and four pennies Scots money; and that in part payment of rents foresaid. I the said Colin Campbell, as factor foresaid, hereby discharge the said James Stewart and all others concerned, for ever. And I, as factor foresaid, hereby oblige me to warrant this my discharge at all hands, as law will. In witness whereof, I have written and subscribed these presents, at Glenure, this 14th day of December 1749 years.

COLIN CAMPBELL.

### II.

Received by me Colin Campbell &c. (as in the former discharge) from James Stewart tacksman of Aucharn, also possessor of Glendurrar a part of said estate, for himself and the other tenants, &c. the sum of six hundred and eleven pounds one shilling and four pennies Scots money; and that &c.—at Glenure this 28th day of November 1750 years.

COLIN CAMPBELL.

## Productions for the Pannel,

### BEING

FIVE LETTERS WRITTEN TO HIM BY COLIN CAMPBELL OF GLENURE.

### I.

Glenure, 8th November 1748.

Sir,

I think I can now, with some certainty, tell you, that I am Glenure appointed factor over the lands you possess, and other lands that belonged to your brother Ardshiel; and as the term is now at hand, will beg the favour, you desire the tenants and possessors to be preparing the rents. I am, Sir, your most obedient humble servant,

COLIN CAMPBELL.

Addressed thus: To James Stewart in Auchindarroch in Duror.

### II.

Glenure, 14th October 1749.

Sir,

As I intend Monday next to be in Duror, to hold a Baron-Glenure balie-court on the estate of Ardsheall, and call for bygone rents,

## James Stewart.

Glenure have sent you this, to beg the favour you would let the tenants know of it, that they may be prepared to make payments, and not be out of the way; and I shall be glad to have the pleasure of seeing you at Taynaheinsaig Monday afternoon. I am, Sir, your most obedient humble servant,

COLIN CAMPBELL.

Addressed on the back: To Mr. James Stewart brother to Ardshiel.

### III.

Glenure, December 11. 1749.

Sir,

Glenure This moment I had your's by your servant, with the twenty pounds eighteen shillings and five pence Sterling, and the warrant I formerly gave you. Receive inclosed your note: your payments are very good, for which I am obliged to you. I intend, God will, to be at Edinburgh on, or a day or two before the 25th current; that is, I intend to set out from this place this day, or to-morrow eight days, and will go by Glasgow, and make no stop by the way. Remember Lady Ardshiel's discharges, and all your other tackling. I heartily wish you a good journey.

COLIN CAMPBELL.

My wife, who, I find, is your sincere wellwisher, returns you her hearty thanks, and is sorry you have such bad weather to travel, when you are so weak.

Addressed on the back thus: To James Stewart in Auchindarroch in Duror.

### IV.

Glenure, 6th April 1750.

Sir,

Glenure I have your's, and think it's quite right to have burliemen: they are frequently very necessary, and can't well be wanted. You will therefore appoint two discreet honest men for that purpose of the tenants; and, to prevent any complaints or objections, be sure you swear them to fidelity in their office. My wife returns you her thanks for your good wishes. I am, Sir, your most obedient,

COLIN CAMPBELL.

Addressed on the back thus: To Mr. James Stewart in Auchindarroch.

## Addresses to Jury.

V.

Glenure, 14th March 1751.

Sir,

After you left this, something has occurred that makes it <sup>Glenure</sup> necessary that you do not set any part of Ardshiel, Auchindarroch, or Aucharn, till I see you after my return from Inverary; which is the reason I run you this express. I am, Sir, your affectionate humble servant,

COLIN CAMPBELL.

Addressed thus: To James Stewart of Aucharn, Duror.

The proof on both sides, written and verbal, having been submitted, Lord Elchies said to the Lord Advocate that now was his time to proceed to address the jury, which Mr. Grant did as follows:—

The LORD ADVOCATE—Gentlemen of the Jury, it now becomes <sup>Lord Advocate</sup> my duty, to be assisting to you in the discharge of yours, by stating to you this case and summing up the evidence that hath been given in your presence, which I shall now proceed to do as well as I am able, after so long an attendance.\*

That attendance, I am sensible, must have been very heavy upon you, and hath been such as the like hath not happened since the Circuit Courts of Justiciary were brought to be held in this county; but I hope you will not repine at the great fatigue of this trial in a case whereof the importance is as unusual as the length of it, and in which your giving a just verdict will be highly for the service and credit of your country.

I need not resume to you, gentlemen, the libel or indictment, whereof I presume you have been furnished with printed copies before you came here, that, being thereby informed of the principal circumstances which have been discovered concerning the murder of Mr. Campbell of Glenure, you might have leisure to weigh the import of these and be the better enabled to attend to the evidence that should be brought before you; and, on the other hand, the pannel, James Stewart, who is now standing his trial, was, by that libel, fairly informed of the principal facts and circumstances that were then discovered against him, so as

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\* By the sixteenth Act, anno 1672, concerning the regulation of judicatories, article tenth, on the Justiciary Court, it is provided in these words—"That, in all criminal pursuits, the defender or his advocate be always the last speaker, except in cases of treason or rebellion against the King."

## James Stewart.

**Lord Advocate** he might have opportunity to account for these and clear himself, if, notwithstanding such strong appearance, he was truly innocent.

The crime itself which gives occasion to this trial was of its nature the most horrid and atrocious that can well be conceived. Wilful murder, at any rate, is a crime most heinous, and, concerning the first murder, God Almighty Himself said to Cain, "The voice of thy brother's blood crieth unto Me from the ground." And the murder now in question, as to this pannel's accession to it, was one of the most causeless and unprovoked that ever happened. Poor Mr. Campbell of Glenure was cut off in the vigour of his life, in the very road of his duty in the King's service, and for no other cause or provocation than his doing that duty; and then he was basely assassinated by a ruffian, who lay in wait for him and shot him from behind his back, so as he died upon the spot, leaving two infant children and his widow pregnant.

And to this horrid violation of the laws of God and of humanity is to be added, in the present case, that the sole offence taken at Glenure was his acting in the quality of factor on the forfeited estate of Ardshiel, agreeably to his powers and instructions from the Barons of Exchequer, as being administrators for the King, whose property that estate was, and it was resented as a capital injury that the King's factor should venture to exercise His Majesty's property as freely as every subject may do his own.

And, last of all, that this murder was committed on the 14th day of May last, just seven weeks after His Majesty had given his Royal assent to, and passed into law, the bill for annexing this and other forfeited estates to the Crown unalienably, and for applying the rents and profits thereof for the better civilising and improving the Highlands of Scotland.

The clemency of the King had been extended early after the last rebellion, by the act of grace of the twentieth year of his reign, of which the pannel, James Stewart, among many others, had the benefit, and other beneficial laws were then made to secure and promote freedom, property, and good order in all parts of Scotland. And, to crown all, this last most beneficent act was made for the more immediate benefit of the Highlands of Scotland, out of which three rebellions have been raised since the accession of the Royal Family now happily reigning—an act of beneficence not to be paralleled in history, and calculated to render all the inhabitants of the Highlands good and useful subjects under this Government, by making them feel their own interest in being such, and rendering the meanest of them who will be honest and industrious, free and happy; and at such a juncture the murder you are now inquiring into received no small aggravation, as it was flying in the face

## Addresses to Jury.

of the Legislature itself, and endeavouring, as much as in these criminals lay, to defeat or discourage the prosecution of a measure of government so highly gracious and beneficial to this country. Lord Advocate

The truth is, gentlemen, that, though God be praised, the Highlands of Scotland are in this age less barbarous than they have been in former times, yet in our own time there have been such instances of remaining barbarism as serve to prove but too strongly that these countries stand yet in need of being better civilised. I think it was in the year 1724 that, for an offence of the same nature with what was here taken, an attempt to remove certain Macphersons living on the estate of the Duke of Gordon in Badenoch, the late Gordon of Glenbucket, his factor or tacksman, was invaded, and received many wounds, given with intent to bereave him of his life, though he chanced to recover.

You must all remember how basely Captain Munro of Culcairn was assassinated by lying in wait when he was acting in his duty in the King's service soon after the defeat of the late rebellion.

And you must all have heard of the late barbarous enterprise of Robert Macgregor and his accomplices in carrying off from her own house the unfortunate Jean Kay, a young widow and an heiress, in the depth of winter and middle of the night into remote parts of the Highlands, and causing her to be married to that Robert, a person of no fortune and an outlaw for murder, for being a conductor in which attempt James Drummond, *alias* Macgregor, a brother of Robert, has been lately convicted.

The excuse offered for James Macgregor was the same mistaken principle that appears to have misled the unhappy prisoner at the bar. It was said that James Macgregor was actuated by one of the best affections; he was seeking no personal advantage to himself by that enterprise, but only to make the fortune of Robert, his brother.

And the now pannel, James Stewart, conceived a mortal enmity against Mr. Campbell of Glenure for disabling him to provide for the children of his brother, Charles Stewart, late of Ardshiel, attainted, by contributions levied from the tenants on that estate who had been under his influence.

But, alas! what a delusion is it from such principle to be led to commit or justify the most heinous and abominable crimes. The care of the interest of one's kindred is doubtless a laudable affection, and even when that goodwill is extended to the remoter degrees, and enlarges the circle of benevolence, there is no harm in it, provided in both cases it be conducted with justice, and men exert themselves to serve their friends without violating the rights of other individuals or the laws of society and civil government; but he who robs or defrauds his

## James Stewart.

Lord  
Advocate

neighbour to provide for his own household, or the immediate children of his own body, is not the less criminal in the sight of God and man that he was moved by an affection, in itself natural and just, but which he pursued in a wicked manner.

And in the present case of the murder of Glenure, there appears to have been no reasonable or probable scheme of advantage to the family of the late Ardshiel or anybody, but that it proceeded from mere wickedness, malice, and resentment, the most groundless that ever was; it affords a recent and shameful instance of that spirit of revenge which was the characteristic of the barbarous Highlanders in former times, and a pity it is, gentlemen, and a reproach to the present age, that it should be yet capable of furnishing such an example.

I am far from meaning by this that the crimes of a few wicked persons can justly bring a general imputation on the whole country where these were committed. We daily hear of most horrid and unnatural crimes perpetrated in the parts of the kingdom the most wealthy, populous, and civilised, but the part incumbent on the country where such things happen is to purify the land of the innocent blood with which it is polluted by bringing the guilty to condign punishment, and this is what you are now employed in, and, as you have attended to the evidence patiently, I desire nothing more than, as an impartial and intelligent jury, you may consider it carefully, in order to discern the truth, and then to follow that resolutely according to the conviction of your own minds, which, if it lead you to believe the pannel guilty, you will do justice to your country by saying so, and if you are not convinced of his guilt, in God's name let him be acquitted, for better that this murder, atrocious and scandalous as it is, should go altogether unpunished than that one innocent man should suffer for it.

In order to lay before you distinctly the evidence that you have heard of this pannel's accession to the murder of Glenure, I shall first of all recite the state or situation in which the deceased and the pannel stood towards each other previous to the murder, and also that of Allan Breck Stewart in respect of both the others. Secondly, I shall point out to you the evidence that Allan Breck was the actual murderer, which I admit to be a fact that was incumbent on us to prove in order to convict this pannel of wilful accession to it; and, lastly, I shall sum up the evidence that has been brought of that accession and examine the force of the defences or excuses which the pannel has endeavoured to prove.

As to the first of these, the situation of the pannel himself; that, gentlemen, you partly know, and have heard proved. He is a bastard brother of Charles Stewart, late of Ardshiel, attainted, who out of his own tenants, and those of Dougal Stewart of Appin, his chieftain, levied a regiment or battalion, at

## Addresses to Jury.

the head of which he went into the late rebellion, accompanied, among others, by this pannel, who had the benefit of His Majesty's act of grace or indemnity, whereby he was left at liberty to remain with his family in the country, whilst Ardshiel himself, the attainted person, made his escape into foreign parts, leaving at home his wife and a family of children, who, as Mr. Campbell of Airds has deposed, were all young, his eldest son being now, as he thinks, about eighteen years of age, and, consequently, at the breaking out of the late rebellion, must have been about eleven.

Lord  
Advocate

The late rebellion, as you all know, was finally suppressed by His Royal Highness the Duke in the spring and summer, 1746; in the year following, the Act vesting the forfeited estates in the King was passed, and in 1748 the lands of Ardshiel, among others, were surveyed by order of the Barons of Exchequer, to the property whereof a claim was entered on behalf of Alexander, the eldest son of Charles Stewart, the attainted person, which claim, upon answers made for the King, was dismissed by the Court of Session; and thus it happened that there was no factor appointed by the Barons on the estate of Ardshiel until Colin Campbell of Glenure was made factor by commission, bearing date the 23rd February, 1749, upon that estate, and also upon the neighbouring lands of Allan Cameron of Callart, attainted, and, adjoining to these, that part of the estate of Lochiel which lies in the shire of Inverness, to the southward of Fort-William, and betwixt that fort and the ferry of Ballachelish, of which you have heard so much, upon that loch or arm of the sea which separates Lochaber in Inverness-shire from the country or district of Appin in this shire.

Now, as this factory was granted full three years after the rebellion, it is to be observed how the estate of Ardshiel was possessed and managed in this interval, and this appears by the oath of Alexander Stewart of Innermahyle, who hath deposed that before the factory, as he believes, the tenants paid their rents to the lady of Ardshiel, and that she again employed the pannel to deal with them.

It was during this period that the pannel, as the same Alexander Stewart deposes, who had been a great many years ago tenant to his brother Ardshiel in the farm of Glenduror, and had been removed also several years ago, by his brother, again took possession of the same farm, and that Ardshiel's lady and the pannel, jointly, introduced certain new tenants of their own choice into different parcels of the land, which Ardshiel, the attainted person, had himself occupied before the rebellion.

Again, when Glenure had obtained this factory (after he had been for some time abroad with the regiment to which he

## James Stewart.

Lord  
Advocate

belonged in Flanders, and, being now come home, was occupied with the treaty for his marriage with the young lady, who is now his widow); he did, as Mr. Campbell of Airds hath deposed, for some time employ the now pannel as his sub-factor in levying the rents of Ardshiel and setting the lands; and, to the same purpose, the said Alexander Stewart deposes, that the factor gave the pannel the opportunity of having the greatest influence with the tenants of Ardshiel, more than any other person, by allowing the pannel to let the lands, which he continued doing to Whitsunday, 1751, if not at that time also, but adds that the pannel's connection with t<sup>e</sup> family of Ardshiel gave him also a natural influence over the tenants, even before Glenure's factory.

The use which the pannel made of this influence, natural or acquired, appears partly from the evidence of the same two gentlemen, for upon this article Mr. Campbell of Airds hath deposed that "the pannel told him that whatever was made of these rents, over what was paid in to the Exchequer, was accounted for to the children of Ardshiel, and, when he removed from Glenduror, he told the deponent that he had reason to believe that the said excrement of the rents would still be accounted for to them, and in that case he would be easy as to his own removal."

And Mr. Stewart of Innermahyle deposes upon this article, "That the pannel was again removed by the deceased Glenure, the factor, from the farm of Glenduror at Whitsunday, 1751, and the lands set to Mr. Campbell of Ballieveolan; that, as the pannel is the deponent's near neighbour, the deponent had frequent opportunities of conversing with him touching his said removal; that the pannel did not expect to have been removed, and seemed dissatisfied that he was, and said he believed that Glenure would not have removed him if (Mr. Campbell of) Ballieveolan had not sought those lands from him; that the pannel further said that the tenants generally allowed some gratuity to Ardshiel's children, and that these lands were the best farms on the estate, and most of the benefits accresced from them, and though he himself could be provided of a farm elsewhere, yet the children would be deprived of that benefit."

In what manner this removal of the pannel from this beneficial farm of Glenduror, to which he had last entered since the rebellion, without any lawful title whatever, was brought about appears from the instructions to Glenure from the Barons of Exchequer produced, and proved before you, the last of which is in these words, "You are on no condition whatever to let a farm to any of the friends (i.e., the relations) of the forfeiting person." And though it be true, that these instructions bear date the 25th July, 1751, about two months after the actual removal of the pannel from Glenduror, these were, nevertheless,

## Addresses to Jury.

the true cause of that removal, for it was known or expected by the factor that he would receive such instructions, there having been notice given to the Lords Commissioners of the Treasury of a considerable possession of the estate of Lochiel having been let to, or for the use of, one of the brothers of the attainted person, upon which their lordships had directed the Barons of the Exchequer to provide against the like being done for the future, in order to avoid the occasions of continuing that leading or influence over the vulgar inhabiting those estates that had produced so much disturbance and mischief to the public.

Lord  
Advocate

And thus it was through necessity, and in order to the faithful discharge of the duty of his office, that Mr. Campbell of Glenure, at Whitsunday or in May, 1751, removed the pannel from his possession of the farm of Glenduror, to the continuance whereof he had no legal title or claim whatsoever, and also resolved to employ the pannel no longer as his sub-factor or assistant in managing the estate of Ardshiel.

It is not easy to conceive that there was any reason or just cause given by this conduct of Glenure for resentment or hatred from this pannel, even if it had been true, which the pannel expressed to Stewart of Innermahyle, that as he believed Glenure would not have removed himself if Ballieveolan had not sought or solicited this possession of Glenduror from him; and yet that the pannel conceived and expressed and prosecuted such disposition in the most outrageous manner, hath been now fully proved before you. But, before I mention the particular evidence of this, I must proceed to recite the fresh cause of difference betwixt these persons, and of animosity conceived by this pannel from the after-proceedings of Glenure in the spring of this present year, when he, having taken the resolution to remove a few of those tenants who had been introduced to their possessions, as I have mentioned, by Ardshiel's lady and this pannel, in the interval betwixt the Rebellion and the date of the factory, it appears that the pannel, being apprehensive that this would lessen his interest and influence among the people, if he should not be able to protect those persons in the possessions, which he himself had bestowed or procured, took the resolution to oppose these removings, which he prosecuted by representing and complaining of it in the country as a mighty act of oppression, because the King's factor thought fit to remove four or five tenants lately introduced upon this estate, who had neither standing leases nor old possessions to entitle them in point of right, or in point of favour, to be continued, and this groundless opposition to those removings the pannel set about and conducted at his own expense, and gave himself great agitation and trouble in the prosecution of it, having gone to Edinburgh in April last on purpose to present the Bill of Suspension of those removings,

## James Stewart.

**Lord Advocate** which you have heard, setting forth most frivolous grounds, and all this without the knowledge, application, or contribution for the expense by the tenants themselves in whose names he took upon him to offer that Bill of Suspension, until he had obtained at Edinburgh an Answer to the Bill from the Lord Dun, Ordinary, that Answer was put in to the same, and sisting or staying execution in interim, with which Sist (and certain advices he had received at Edinburgh, for making application for those tenants to the Lords of Exchequer when they should meet in the beginning of the next year) the pannel returned to his own house on the 27th of May last, and sent for those tenants and gave them notice that he had been at Edinburgh on their account, and that if they had not continued their possessions they were advised to go to Glenure and seek their possessions (or demand such continuance), and if he did not grant their desire they should send for a notary and go with him to protest against Glenure; and if they pleased he would send for a notary, to which they agreed: and accordingly the pannel sent for Charles Stewart, who hath been examined on this fact, and sent him along with the tenants to Glenure's house, where he intimated the Sist and took a Protest against him on the 1st May last.

It was upon receiving this notice of a Suspension presented and a Sist granted that Glenure repaired to Edinburgh and put in his Answer to the Bill, upon consideration of which the Bill was refused or dismissed by the Lord Haining, Ordinary; and then Glenure returned to his own house on Saturday, the 9th May last, in order to take the necessary measures for executing the removings that had been thus opposed.

This part of the pannel's proceedings is proved by the oath of Charles Stewart, his notary, by the pannel's own examinations, which you have heard read, and by Duncan Maccoll in Ardshiel, one of those tenants who hath now deposed that, upon himself and others being warned to remove from the lands of Ardshiel, as at Whitsunday last, he, for his part, had no intention other than to submit to the warning till a paper was procured from Edinburgh, which he heard read by Charles Stewart, notary, at Aucharn, as on a day he was there, being along with his neighbours advertised to meet there, where he and his neighbours were told by the pannel and Charles Stewart, the notary, that the paper brought from Edinburgh contained advice for those who had been warned to remove to continue in their possessions, and that they should go to Glenure and ask the same from him. And deposes that he gave no allowance or mandate to the pannel to make any application at Edinburgh against the removing; that, before he heard anything of this paper from Edinburgh, he had engaged to serve as bouman to the tenants Glenure was to introduce; but that, on hearing of this paper, he preferred

## Addresses to Jury.

keeping by his neighbours, as he considered the being continued in his possession, did the law support him in it, as more beneficial to him; and adds that the procuring the paper at Edinburgh cost him no money.

Lord  
Advocate

To the same purpose John Maccombich, another of those tenants in Ardshiel, hath deposed, and adds this farther circumstance that as to his agreeing with the incoming tenants to be their bouman, "he heard both Glenure and these tenants say that it was by Glenure's advice that this was done," which is, by the way, an instance of the humanity with which Glenure acted on this occasion in being at pains to provide bread for those persons whom he did not think fit to continue as tenants on this estate of Ardshiel, where they had been so lately introduced by the pannel.

These, then, were all the causes of offence, that after the strictest inquiry can be discovered to have been ever given by Glenure to this pannel, namely, that Glenure, as factor upon this estate of Ardshiel, removed the pannel himself from the farm or possession of Glenduror at Whitsunday last year, and gave over employing or entrusting the pannel to act under him in the management of the lands of Ardshiel; and that he was taking measures for removing the few tenants lately introduced by the pannel at Whitsunday this year, which measure he persisted in, the opposition that the pannel was pleased to make notwithstanding—very strange causes, it must be confessed, for the pannel's conceiving a violent and even a mortal enmity against Glenure, and yet nothing is more certain than that violent offence may be taken where no just or even plausible cause for it hath been given; and, from the first murder recorded in sacred history down to this now in question, often hath it happened that wicked men have hated their brothers without a cause—that is, without a reason or just cause—though there was always an occasion or a motive, such as it was, for that hatred being conceived.

Again, it is to be considered that occasions of offence operate differently according to the education, temper, and character of the party who meets with them, and we have now heard from the evidence in this trial what a wrong way of thinking this unfortunate pannel is possessed of, in holding it to be a cause of mortal enmity that a man should be removed by another from his farm or possession which he hath no manner of title to hold or retain, which is a prejudice or delusion that, in a lower degree, prevails elsewhere, but seems to be in a particular manner prevalent in the Highlands, and was the cause of the attempt made by the Macphersons to assassinate Glenbucket some years ago, as well as the cause of the horrid murder into which you are now inquiring.

And for one proof that this pannel is deeply poisoned with

## James Stewart.

**Lord Advocate** this most erroneous opinion, you heard, gentlemen, a little while ago, the objection that was by him made to Alexander Stewart, senior, in Lagnahaw, one of the witnesses in the list served upon him, and called up to give evidence against him, to whom the pannel objected that this witness bore enmity against him, for that the witness was formerly in possession of the lands of Aucharn which the pannel now holds under Mr. Campbell of Airds, and that the pannel had caused the witness to be removed from that possession and succeeded him in it, an objection in itself insufficient in point of law, which cannot suppose men to be so wicked as to entertain mortal enmity for such a cause, and therefore, as you heard, it was overruled by the Court, notwithstanding which we freely passed from the witness, being satisfied that we had evidence enough besides, and unwilling to leave any room for the pannel to complain, or for you, gentlemen of the jury, to apprehend that any one witness was used against him of whose credibility there could be the smallest suspicion; but the very moving of such objection on the part of the pannel affords one proof of his own sense of the nature and degree of such offence.

Another signal proof of this appears from the oath of Ewan Macintyre, late herd in Glenduror, who hath deposed, "That he engaged to be herd to Mr. Campbell of Ballieveolan in the farm of Glenduror for the year 1751, and that the day after he entered into his service there the pannel challenged him for accepting thereof, and told him that he would be *fit-sides* with him sooner or later for doing it; and that if he did not meet with resentment himself in his lifetime, others, such as his friends, might meet with it after his death." And adds, "That he himself was never in the pannel's service." This was surely carrying this delusion to a most extravagant pitch, and such as, to any stranger to this odd way of thinking, must have appeared incredible till he heard the proof of a fact which demonstrates how deeply that opinion is rooted in the mind of this pannel.

And, accordingly, we have heard how that was farther displayed by his words and by his actions on other occasions in respect of the deceased Glenure for the causes of offence I have mentioned by the evidence I shall now point out.

And, first of all, John Breck Maccoll, the bouman to Appin (who, though he lives in a desert, appeared to me to have given his evidence in a most natural, ingenuous manner, and, by his own words and behaviour related in it, discovers a degree of sagacity which, in a person of his situation, surprised me), and, upon the article I am now speaking of, he deposes, "That, in a conversation the deponent had with the pannel, as the deponent best remembers, about two years ago" (whether he was herein accurate in the chronology is not essential to the question in issue) "mention being made of Glenure's being

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about to take on himself the management of the estate of Ardshiel from the said pannel, and thereby disabling the pannel from being of any service to Ardshiel's children, he heard the pannel say he would be willing to spend a shot upon Glenure, though he went upon his knees to his window to fire it"; and further deposes, "That he heard a waif" (that is a flying or uncertain rumour) "report in the country that Ardshiel (the attainted person) had sent home a message that he believed all his friends were dead when Glenure was allowed to go on at the rate he did."

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Again, another remarkable conversation of the pannel's, in the same spirit, but carried a good deal farther, is proved to have happened about Christmas last, 1751, within the pannel's own brew-house at Aucharn betwixt him and three of his own servants, who all concur in proving it, namely, John More Maccoll, Dougal Maccoll, and John Beg Maccoll, of whom the first hath deposed, "That he was present at a conversation that happened betwixt the pannel and John Beg and Dugald Maccolls, both servants to the pannel, in his brew-house at Aucharn before daylight upon a morning about Yule (or Christmas) last, as the deponent best remembers; that the deponent was then employed in distilling the second draught of a brewing of *aqua vitae*, and the pannel ordered the deponent to give him and people present a dram, which the deponent did; that the pannel said Glenure would not take the rent from the tenants of Aucharn, part of the Ardshiel estate, because they had given the pannel some barley which Glenure alleged they ought to have paid him; that the pannel complained it was hard to refuse the rent in money from the tenants in a scarce year, and observed that it would be of no great consequence to him, the pannel, though he should pay back the barley, in comparison of what it would be to the tenants for subsequent years, in case they were obliged to pay their farm bear and meal" (to wit, "in kind" according to their leases), "and said the tenants or commoners were likely to be very ill off, for, if Glenure went on in the way he then did, it was likely that he would be laird of Appin in a very short time; and that he knew once a set of commoners in Appin who would not allow Glenure to go on at such a rate, to which the deponent and the rest answered that they knew no commoners in the country who could strive or contend with Glenure in that manner."

This conversation in the brew-house is further proved or explained by the other two servants present; and John Beg Maccoll adds this circumstance that after he and Dugald Maccoll went out of the brew-house, either that day or some time thereafter, they talked together what the import of this conversation might be, and "that the deponent was at a loss whether to consider it as an encouragement to destroy Glenure,

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**Lord Advocate** or as a complaint against the commoners of Appin, as not being so faithful to the pannel as he expected them to be."

It must be left to your consideration, gentlemen, whether this John Beg Maccoll was not in the right in his conjecture, and that this conversation can receive no other construction than that the pannel took that occasion to instigate these servants of his own, who were all of one tribe, to resent against Glenure the supposed injuries to the common people of that country, which the pannel had thus represented and exaggerated to them, or, at least, to feel their pulses, and try how they would relish such a proposal or insinuation.

But further still, the pannel continued to discover the rancour with which his own heart was filled against Glenure. The next instance of which that hath appeared upon the evidence happened in April last, when he was on his road to Edinburgh with intent to offer a Bill of Suspension of the removing of the tenants that hath been mentioned; and here three circumstances are proved by the testimonies of Alexander Campbell and Ewan Murray, two of his landlords or innkeepers by the way, and Colin Maclaren, merchant in Stirling, who fell into company with the pannel at both these houses, and travelled in the pannel's company some miles on the road towards Stirling.

Alexander Campbell, in Teynaluib, hath deposed, "That in the end of April last the pannel called at the deponent's house in the morning to have his horse corned, and having called for, and got a dram, which was afterwards set down upon the table, one Maclaren, a merchant in Stirling, who had lodged with the deponent the night before, being present, asked the pannel if he would not help the deponent to a dram, and the pannel answered he did not know anything that he would help the deponent, or any of his name, to, if it was not to the gibbet: and after some further conversation the deponent said that Glenure, as he supposed, was the person of the (deponent's) name with whom the pannel had the greatest quarrel; and the deponent did not know any good cause the pannel had for it." To which the pannel answered that "if Glenure had used the deponent as ill as he had used him" (the pannel), "by turning him out of his possession, he would have no less quarrel with him than he had." And, upon the pannel's interrogatories, the witness added that at that time he thought what the pannel said proceeded from malice, and that the pannel was then perfectly sober.

This conversation was confirmed by Colin Maclaren, the merchant, who had lodged in that house all night, who adds, that the pannel then said (speaking of the Campbells) "that he did not choose to be an executioner, but he could draw down some of their feet"; and that at first, during this

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conversation in Campbell's house, he thought that the pannel had been in joke, but afterwards it was like to become very serious, for the landlord and he came to pretty high words together.

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The next landlord, Ewan Murray, at the west end of Lochearn, hath deposed, "That in April last the pannel and Colin Maclaren, merchant in Stirling, came to the deponent's house, and the pannel told the deponent that Glenure had warned away several families in Ardshiel's estate to remove, and that he was informed that none of the factors on the forfeited estates had power to remove the tenants; and that he was going to Edinburgh to take advice of lawyers about it; and if he had not that power, that the pannel would apply for Suspension in his own name and in the name of the rest of the tenants; and the conversation, turning upon an officer in the army that was branded with cowardice, and had been broke on that account, the pannel said that he had reason to say that Glenure was as great a coward as that officer, for that he, the pannel, had challenged him to fight him, which Glenure declined, and desired the deponent to tell Glenure that he had told him so; but the deponent answered that he would not carry any such message from one gentleman to another, and from the conversation the deponent understood that the arms with which the pannel had challenged Glenure to fight was with pistols." And it is true, gentlemen, that this witness adds, upon the pannel's interrogatory, "That he thought the pannel was a little concerned with drink"; but if it was so, *tum veræ vocæ*.

This conversation is again confirmed by Mr. Maclaren, the pannel's fellow-traveller, in both the parts of it, who adds this circumstance, that the latter part of the conversation happened upon the road after they left that house, and Murray, the landlord, rode some part of the way along with them; and then Mr. Maclaren deposes to a third conversation betwixt himself and the pannel, in these words, "That, after parting with Ewan Murray, in the course of their journey, the deponent found that the removing was much at the pannel's heart, and the deponent endeavoured all he could to divert the conversation to another subject; that the pannel told him that if he failed in a Suspension at Edinburgh he would carry it to the British Parliament: and, if he failed there, told him, after a little pause, and with an emphasis, that he behoved to take the only other remedy that remained."

These last words, gentlemen, need no explanation, for, surely, after the judgment of the British Parliament, no other legal or lawful remedy could remain.

And as to the condition of the pannel during these conversations, Mr. Maclaren farther deposes, "That he did not think the

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pannel drunk either in Campbell's house or in Ewan Murray's house; but, after leaving Murray's house, they drank two or three drams at a dram-house, and after that the deponent thought him much concerned with liquor; and it was after taking these drams that the conversation between Murray and the pannel, with respect to challenging Glenure, happened, and that the deponent and the pannel had rode several miles together before the conversation about the British Parliament; and the deponent thought him even then still concerned with drink"; and very likely it was this that threw the pannel so much off his guard as to speak out to his landlord and his fellow-traveller so much of what lay deeply at his own heart, and to tell upon himself this matter of fact about the challenge he had given Glenure to fight him with pistols.

Such appearing to have been the temper and disposition of the pannel towards Glenure in the month of April last, and before that time, I shall next point out to you, gentlemen, the evidence concerning that of his friend Allan Breck, who himself does not appear ever to have had any acquaintance of or intercourse with Glenure in his life, but, by the pannel's own showing, was his kinsman, and had been his ward or pupil; and by Breck's character, and his then situation, as being engaged in foreign service, and not at liberty to live openly in this kingdom for any long time, though he went about among his Highland friends without any scruple, he was a fitter instrument of the vengeance meditated against Glenure than the Maccolls, the pannel's own servants, or any of the common people of Appin could be.

And concerning this Allan Breck, John Beg Maccoll, one of the pannel's servants, hath deposed, "That in March last he came to the pannel's house late in the evening dressed in a blue coat, red waistcoat, black shag breeches, and a feathered hat" (that is, in his French dress, which the witnesses call a side or long coat, in opposition to the black short coat with silver buttons belonging to the pannel, which he was afterwards seen in) and upon this, his first arrival, the witness proceeds to depose, "that he looked into the kitchen, and went immediately to the room where the pannel and his family were; that afterwards he used to go through the country to different places, and came frequently back to the pannel's house; that once he remained there a week, which was the longest time that he stayed there at one time."

Here is, then, the intimacy still subsisting betwixt the pannel and Breck that naturally arose from the acknowledged connection betwixt them. The pannel's house was his headquarters in the country of Appin, from whence he made his excursions to visit his other friends in those parts; and during the pannel's absence on his journey to Edinburgh Breck

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went over to see his relations in Rannoch. And it hath appeared upon the evidence how thoroughly Mr. Breck espoused and entered into the notions and sentiments of his old guardian and friend, the now pannel, with respect to Glenure.

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And on this head Duncan Campbell, change-keeper at Annat, deposes, "That in the month of April last the deponent met with Allan Breck Stewart, with whom he was not before acquainted, and John Stewart of Auchnacoon, at the house of the walk-miller of Achosragan, and went on with them to the house; that Allan Breck said that he hated all the name of Campbell, and the deponent said he had no reason for doing so, but Allan said he had very good reason for it; that thereafter they left that house, and, after drinking a dram at another house, came to the deponent's house, where they went in, drank some drams, and Allan Breck renewed the former conversation, and the deponent making the same answer, Allan said that if the deponent had any respect for his friends he would tell them that if they offered to turn out the possessors of Ardshiel's estate he would make blackcocks of them before they entered into possession, by which the deponent understood shooting them, it being a common phrase in the country; that John Stewart said he did not blame Glenure so much as Ballieveolan for taking those possessions, whereas Glenure was doing the King's service, and Allan Breck replied that, besides that, he had another ground of quarrel against Glenure for writing to Colonel Crawford that he (Allan) was come home from France, but that he was too cunning for him, for that, when at Edinburgh, he had made up his peace with General Churchill, and had got his pass, which he had in his pocket-book; that the deponent asked a sight of it; that he searched his pocket-book but could not find it, upon which he tore a leaf out of the book and said there it was. And deposes that he said twenty times over he would be *fit-sides* with Glenure wherever he met him, and wanted nothing more than to meet him at a convenient place."

This conversation is confirmed by Anne Maclaren, servant to the said Duncan Campbell, who deposes, "That she heard Allan Breck then say that he would not shun Glenure wherever he met him; by which she understood that he was to do hurt or harm to Glenure wherever he saw him."

And it is further confirmed by Angus Macdonald, the walk-miller mentioned by Duncan Campbell, and by Robert Stewart, a fourth person present in the company, who adds, indeed, that Allan Breck was much in drink at the time of uttering the above expressions, but they are not the less to be regarded in this trial, when the occasion of these threats, the repetition of them, and, last of all, the fatal execution, hath been at the same time proved before you.

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Advocate

Another like conversation of Allan Breck's was proved to have happened at the house of Malcolm Maccoll, change-keeper at Portnacrosch, by the landlord, and by Anne, his wife, who depose that one morning in April last, Allan Breck being in his house with John Stewart, "John Maccoll, the servant to the deponent, came into the company in a shabby condition; that Allan Breck asked who he was; that the said John Stewart answered that he was an honest poor man, with a numerous family of small children, and that it would be great charity in anybody to assist him, upon which Allan Breck desired the said John Stewart to give the said John Maccoll a stone of meal, and he would pay for it, which the said John Stewart promised to do; that the said Allan then gave the said John Maccoll a dram, and told him if he would fetch him the red fox's skin he would give him what was much better"; and depose that they "gave no great notice to these expressions at the time, but, after they heard of Glenure's murder, believed he meant Glenure, as he was commonly called 'Colin Roy,' which means Red Colin in the country."

A third and very remarkable instance of Allan Breck's conversations on this subject, was one which he held with two of the pannel's servants, above mentioned, Dugald and John More Maccolls, whereof the former deposes, "That as he and John Maccoll were harrowing the tath-field belonging to the pannel at Aucharn, being the same day, or the day after the pannel went to Edinburgh (that is on the 3rd or 4th of April), Allan Breck Stewart walked for a good time about the field, and as they were loosing their horses the said Allan Breck and they entered into conversation about France and people from this country there, and John More Maccoll asked if there was any prospect of any of them coming back. Upon Allan Breck's answering he was afraid they would not, John More said he wished that none had ever come from that country, in which the said Allan joined him, saying, it had dispersed the friends he most regarded, and then added that it was a particular misfortune that the management of any concerns they left behind them fell into the hands of one that was about to show them no manner of favour, and declared that he meant Glenure, and told that the commoners of Appin were little worth, when they did not take him out of the way before now; and upon their saying nobody would run that risk, not knowing who would stand by them, Allan Breck answered that he knew how to convey out of the way any person that would do so, that he would never be caught, and also said that they and the tribe they were of" (mentioning the Maccolls) "were not like to be the least sufferers by Glenure's proceedings."

John More Maccoll swears to the same conversation at the harrowing, and deposes that Allan Breck then said, "If they,

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the commoners of Appin, were worth themselves they could keep out Glenure and hinder him from oppressing them, in which case they would not be banished from their natural possessions, and, upon the deponent's answering, he did not see how anybody could pretend to strive or struggle with Glenure in that way, as he had the laws of the King and country for him, and nobody to support or take them by the hand after their so doing; Allan said he had it in his power to save or protect anybody that would put Glenure from trampling upon the country in the manner he then did."

Lord  
Advocate

Here then was Allan Breck, the pupil, in spring last, a few weeks before the murder happened, speaking the very same language, and using the same arguments with two of these Maccolls, the servants of the pannel, with which the pannel himself had been practising upon them in his own brew-house about Christmas last; and this conversation of Breck's was not like the former, after drinking drams in change-houses, but when he was sober and cool, walking in the fields about the pannel's house, which was, in effect, his home.

And to the evidence on this article may be added what the pannel himself hath declared at his first examination before the Sheriff-Substitute, which hath been proved and read in your presence, when, being interrogated, if he had any conversation with Allan Breck concerning Glenure, answered that the said Allan asked the declarant if he heard that Sergeant More (Cameron) was come from France, or if he was in the country of Appin, to which the declarant answered that he did not hear he was in Appin, but he heard he was in Glenetive last year, whereupon the said Allan told the declarant that Sergeant More swore he would kill Glenure because of the treatment he gave the tenants on the estate of Mamore, part of Lochiel estate. Declared also, that the said Allan Breck threatened that he would challenge Ballieveolan and his sons to fight, because of his removing the declarant last year from Glendaror, and being about to remove the other tenants this year from some other parts of the estate of Ardschiel.

Now, as to the mention here made by the pannel of Sergeant More Cameron, I shall hereafter have occasion to take notice of the use the pannel made of it, but have here only to observe that the causes of offence, for which the pannel says Breck threatened to fight Ballieveolan, were the very same which the pannel himself, as well as Breck, resented so highly against Glenure, namely, the removing the pannel himself from Glendaror the last year, and being about to remove other tenants of Ardschiel this year; and though the pannel carefully avoids saying anything of Breck's threatenings against Glenure, after he had been actually murdered, and had attempted to throw the suspicion of that upon Sergeant More, yet here, by the pannel's

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Advocate

own showing, Breck had entered thoroughly into those quarrels of his for the actual removal of himself, and the intended removal of others, and threatened to challenge and fight Ballieveolan upon that account.

And as to the other ground of quarrel against Glenure, which Allan Breck mentions in one of the above conversations, namely, for his supposed writing to Colonel Crawford that he (Allan) was come home from France, I shall not take upon me to explain, or to guess in what manner Allan Breck came to be possessed with such a conceit, because we have heard no evidence concerning the manner in which he received such piece of false information or intelligence, for that it was false hath been fully proved before you. First of all, Colonel Crawford himself, being asked whether the deceased Colin Campbell of Glenure ever told him that Allan Breck Stewart was a deserter and in this country, hath answered upon oath in the negative.

And next, Mr. Campbell of Airds hath deposed, "That in spring last he had a letter from Colonel Crawford telling him that he heard Allan Breck Stewart was come to the country, and enlisting men for the French King's service, and desired the deponent to inquire if it was so; that the deponent did inquire, and wrote the colonel for answer that he heard he had been in the country but that he was then gone away; that this was in the month of April, to the best of the deponent's remembrance, and it seems about that time Allan Breck Stewart had gone to Rannoch, which gave occasion to the deponent's being informed that he was gone away, and did not hear of his having returned to the country till after Glenure's murder, and thinks he wrote also to Colonel Crawford, according to the information he had got, that Allan Breck Stewart was in use of coming every year to the country since Ardshiel went to France."

And Alexander Stewart of Innermahyle deposes, "That he remembers that Allan Breck Stewart came over to this country a year or two ago and stayed some weeks among his friends, but neither at that time nor the last time did he seem, so far as the deponent observed, to be in any apprehension of being taken, only, as he had been once in the army, he did not choose to meet with any of the King's troops."

And, besides all this, it hath appeared in the proof before you that Breck Stewart remained in the country, as usual, a full month or more after he had mentioned the supposed notice given concerning him by Glenure to Colonel Crawford, and it hath not been proved, or even alleged, that in pursuance of that notice, whoever gave it, there was any search made for Breck, or the smallest disquiet given to him, or any alarm or precautions taken by him till after the murder of Glenure, to say nothing, therefore, of the injustice of that cause of offence, had it been true that Glenure, a good subject to His Majesty,

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formerly a military and still a civil officer in his service, had given notice to the commanding officer in a neighbouring garrison of such a person as Breck Stewart, a late rebel, a deserter, or a French emissary, possibly for raising recruits, being then lately come into that country, I have only to observe on this occasion that, in fact, it is incredible that Breck Stewart himself, upon a bare surmise, which was not true, that Glenure had given such notice to Colonel Crawford, and upon which no molestation followed to himself, should have conceived or prosecuted a deadly hatred against Glenure; and therefore the true cause of that enmity must have been the other main quarrel or cause of offence, which was first taken up by the now pannel, and thereafter adopted and espoused by Breck in the manner that you have heard.

Lord  
Advocate

And for the truth of this observation we have the authority of the pannel himself, who had the best opportunity to be thoroughly acquainted with Allan Breck's sentiments, for, in the pannel's examination that hath been read before you, he says, "That how soon the declarant heard of Glenure's murder it came into his mind that Sergeant More had done it, because Allan Breck had told him that the said sergeant swore bloody revenge against Glenure before the sergeant came from France, upon account of Glenure's treatment of Lochiel's tenants, and his differing with John Cameron of Fassaferru, brother to Lochiel; that the declarant's reason for suspecting Allan Breck afterwards, was because he left the country abruptly, without taking leave of him as he expected, and, if the said Allan was guilty of the said murder, he believes it behoved to be on account of the disturbance given to the tenants of the estate of Ardschiel, and knows no other."

Thus, gentlemen, stands the evidence you have heard of the causes of offence, such as they were, that were taken by the pannel and his friend, Breck Stewart, against the late Glenure, and of the manner in which their resentment against him had been expressed and displayed in and before the month of April last, when the pannel went to Edinburgh to obtain a Suspension for staying the removings. And we must now proceed to examine the evidence of the sequel of these animosities and threatenings, and of the fatal execution thereof by the actual murder of Glenure upon the very eve of Whitsunday, or the 15th of May, when he was to have proceeded to the removing of the tenants of Ardschiel, after he had, upon Answers made, obtained the Bill of Suspension offered by the pannel, to be refused or dismissed, whereby the pannel's last effort to prevent those removings and to preserve his own authority or influence with the tenants of Ardschiel had been frustrated.

On the 27th April last, by the pannel's own account, he returned to his own house from Edinburgh with the order he had obtained

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on his Bill of Suspension that the same should be answered and a Sist or Stay of Proceeding in the interim, soon after which he called the tenants and gave them notice what he had been doing for them, and sent them with his notary to intimate the sist to Glenure, which was accordingly done on the 1st of May, as Charles Stewart, the notary, hath deposed.

On Saturday, the 9th of May, Glenure returned to his own house from Edinburgh, whither he had gone to make an Answer to that Bill of Suspension that had been intimated to him, and, upon that Answer, had got the same refused or dismissed, and gave out in his family his resolution, after reposing himself that Sunday at home, to set out on Monday, the 11th, for Fort-William, in order to settle the affairs of his factory on the Lochiel estate, and to return to Appin or Ardshiel before the 15th.

At this time Allan Breck Stewart is proved to have been at the house of John Stewart of Fasnacloich, distant but one mile from Glenure's house, which in that country is near neighbourhood, and there, accompanied by Charles, one of the pannel's sons, where Allan Breck had opportunity to get intelligence of the motions of Glenure, which, accordingly, he received from his landlord, John Stewart, the elder of Fasnacloich, who hath deposed, "That he told Allan Breck that Glenure was come from Edinburgh with a warrant to remove the tenants, to which Allan Breck said that if there was a warrant there was no more to be said, but that if he had no warrant he would not be allowed to remove them"; and the witness adds that "he heard on Sunday, the 10th of May, that Glenure was going to Fort-William, and Allan Breck left his house about 9 o'clock Monday morning."

This is confirmed by James Stewart, the younger of Fasnacloich, who adds that Breck was then in his French dress, and that when he went away on Monday, the 11th, about 9 in the morning he told the family that he was going to leave the country soon but "would see them again at Fasnacloich before he went away"; and farther says that "on Sunday, the 10th, he heard, being in company with Allan Breck, that Glenure had got an order from Edinburgh to remove the tenants, and was gone to Fort-William."

From Fasnacloich Allan Breck came directly the same day to the pannel's house at Aucharn, where, soon after, he put off his French clothes and put on the black or dark-coloured short coat, belonging to the pannel, with silver buttons, with a bonnet and trousers, being, as several of the pannel's servants have deposed, the second time they ever saw him in that dress, the only former time having been when Breck went in these clothes for some days to Rannoch, in April preceding, whilst the pannel was at Edinburgh.

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And now the pannel himself hath declared, "That he was informed on Monday, the 11th of May, by his son Charles, Allan Breck, and Fasnacloich's daughter, that they heard Glenure was to go to Lochaber that day, and that one or other of them told him that Glenure was to remove the tenants of Ardshiel." Lord Advocate

By the communication of this intelligence it appeared that the matter in dispute was coming to a crisis; the laborious efforts made by the pannel in going to Edinburgh of his own accord to get a stop put to the removing, he now saw were rendered ineffectual by means of Glenure's having gone thither after him, and it is presumable from the facts that preceded and that followed this day that this was the time when the pannel and Breck, at his own house, concerted that Glenure should be cut off by the hands of Breck upon his return from Fort-William into that country of Appin; and, as it appears from the evidence that the pannel at this time was low in cash, the facts that have been proved serve to evince or to render it farther presumable that at this time it was concerted betwixt the pannel and Breck that the latter, as soon as his work was done, should retire to the desert of Koalisnacoon, and there wait till either the pannel sent him a supply of money to carry him off, or caused the money to be furnished by his friend and correspondent, William Stewart, merchant in Maryburgh.

It is true that for some hours of this Monday, the 11th, the pannel went from his own house upon a message from Mr. Campbell of Airds, but he returned home in the evening, and in the disposition that both he and Breck Stewart had long been in towards Glenure, which was now more inflamed by this fresh intelligence they had received, that Glenure had got the better of them at law and was about to proceed in the removings, a very short consultation betwixt them might serve to make all this concert, the evidence of which arises from the ensuing facts, joined with those preceding this 11th of May.

For it hath been proved that, on the morning of Tuesday, the 12th, Allan Breck set out from the pannel's house, and dressed in his short clothes, and went directly to the house belonging to Stewart of Ballachelish, adjoining to the ferry of that name, upon the road by which Glenure was to come from Fort-William into Appin, and there Breck met his friend, Stewart, the younger of Fasnacloich, who hath deposed, "That he took notice to Allan Breck that he had changed his dress, who answered that he did it because the day was warm," and adds, "That the deponent was informed at Ballachelish, in company with Allan Breck, that Glenure was gone to Fort-William."

The same day Allan Breck went, accompanied by Fasnacloich the younger, to the house of Macdonald of Glenco, where Glenco's stepmother (the pannel's and Ardshiel's sister), also lived, and

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from thence, after staying about an hour, went across the ferry to the house of Cameron of Callart, where another sister of the pannel and of Ardschiel lives, and where he lodged all that night; and next day, being Wednesday, the 13th, came back, after calling again by the way at Glenco's house of Carnoch, to Ballachelish, where he remained the night following.

And now, gentlemen, we are come to the fatal day, which was Thursday, the 14th of May last, of which and the days immediately following, the various events and incidents that have been proved before you, merit your particular attention, as I endeavour to put you in mind of them as nearly as possible in their order.

On the morning of this Thursday, the 14th, about seven or eight, as John Beg Maccoll, the pannel's servant hath deposed, "the pannel gave a letter to the deponent to be delivered to Charles Stewart, notary public at Maryburgh, and told the deponent that the letter was to make or cause the said Charles Stewart to come to the country of Appin, to protest against Glenure in case he had not a sufficient warrant to remove the tenants of Ardschiel," and "also told the deponent he was to get some money from William Stewart, merchant at Maryburgh, to pay for milk cows that were bought for him in the country, and that if the money was not sent he would not get the cows"; and "that the pannel desired the deponent to make all possible despatch"; that accordingly he made all the despatch he could to Fort-William, where he arrived about twelve o'clock, delivered the pannel's letter to William Stewart, merchant, who told him that Charles Stewart, the notary, was not at home, but that "there was a notary along with Glenure, who would serve the pannel as well as Glenure"; and further told the deponent "that he, the said William, had wrote to the pannel in the morning; that the said William did not give him any money, but said he would send servants for the cattle."

The reason why he got no money at this time is explained by William Stewart himself, who deposes, "That he gave no answer in writing, and thinks he did not give any verbal answer, if it was not that he bid him tell his master, that he was not in cash, which" (he says) "was the case."

The letter itself sent from the pannel by this witness hath been produced and proved before you, and the postscript of it is in these words, which I will now repeat, though they are inserted in the libel, "As I have no time to write to William, let him send down immediately £8 sterling, to pay four milk cows I bought for his use at Ardschiel." The pannel must have had a very pressing use for money when he was thus urging the payment of the price before the buyer received the cattle; and let it be observed that this first express sent with this demand of money from William Stewart was despatched

## Addresses to Jury.

by the pannel on the morning of the day on which the murder happened in the evening. Lord  
Advocate

Again, you are here to observe the connection betwixt the pannel and this William Stewart at Maryburgh, who appears, by the letter which he mentioned to the messenger as having been sent by him that morning to the pannel, to have entered with great zeal into the pannel's scheme for opposing the removing of the tenants; for that letter also hath been proved before you, and contains these words, "I find Glenure has a mind to eject the tenants; but they ought to be deaf to it, and at all risks keep possession, as they are in good hands, and it must end in Exchequer; so that I beg they keep possession, as there will be no troops, they ought to repel force by force and take their hazard of the consequence, as it can be no more than violent profits."

About noon on this Thursday, the 14th, as Ballachelish elder hath deposed that his guest, Allan Breck, "went out with a fishing rod in his hand, and was fishing in a burn near the deponent's house, but he did not see him take any; that he did not take leave of the deponent, and did not return, and he knew nothing of him since."

Archibald Macinnes, the ferryman at Ballachelish, deposes, "That, after midday upon Thursday, the 14th of May last, as the deponent was sitting near the said ferry with another man, Allan Breck came behind him and hosted" (or hemmed), "and, upon the deponent's looking about, desired him to come to him, which the deponent did, and the said Allan inquired of him if Glenure had crossed the ferry from Lochaber to Appin. The deponent told him he was sure he had not; that upon this Allan Breck went away towards the high road; had on a dun coloured big coat, and had no fishing rod"; and further deposes "that Glenure was expected back upon the Wednesday, and the deponent was sure he must be back the Thursday, as it was currently reported in the country he was to have a meeting with some gentlemen at Kintalline" (on the Ardshiel estate) "Thursday night."

These ferrymen have opportunity to learn all the news in the country, and that his intelligence upon this last article was just concerning the motions of Glenure, and that the same were well known is further proved by John Maccombich, change-keeper at Kintalline, who hath deposed, "That upon Tuesday, the 12th of May, Glenure sent notice to the deponent that he and some other company were to be at his house on Thursday then next, and desired that he might be prepared for entertaining them. That he accordingly made provision for them; that he told that Glenure was to be at his house that night, and that the whole neighbourhood knew of it."

And, accordingly, it hath been proved by the persons who

## James Stewart.

**ord  
Advocate** were in company with Glenure—Mungo Campbell, who attended him as a clerk or writer; John Mackenzie, his servant; Donald Kennedy, one of the Sheriff's Officers—that Glenure and they crossed the ferry of Ballachelish betwixt four and five in the afternoon this day; that, after crossing the ferry, Ballachelish elder walked along with Glenure about half a mile till they came to the skirts of the wood of Lettermore, where Glenure, pursuing his journey through the wood, which stood on the ascent of the hill on his left hand, was suddenly shot through the body with two balls that entered behind his back and came out at his belly; of which wounds he died upon the spot about six o'clock that same evening.

It is unnecessary for me to repeat the several moving circumstances related by his attendants; but if this base and cruel murder was truly perpetrated by Allan Breck Stewart, who had expressed his wishes to meet Glenure at a convenient place, it must be confessed with regret that he here met him, or rather in a base and cowardly manner lay in wait for him at a place convenient, indeed, for that wicked purpose, for concealing himself, whilst he went about it, and not far distant from a proper place of retreat after it should be over, until he should be put in condition to leave the country, for which a supply of money was necessary.

The news of the murder was quickly brought to the house of the pannel by John Mackenzie, the servant of the deceased, who went there to get intelligence of Mr. Campbell of Ballievealan, "where the pannel, seeing him weeping, asked what the matter was, and the servant having told him his master was killed, the pannel wrung his hands, expressed great concern at what had happened, as what might bring innocent people to trouble, and prayed that might not happen."

And John Beg Maccoll, the pannel's servant, who had been sent express that morning to Fort-William, and who was present at this circumstance, relates it in these words—"That he was hardly an hour returned home, when Glenure's servant came to the door calling for the pannel; that the pannel went immediately to the door and asked the servant what was the matter, and what news he had, to which the servant replied, 'The worst I ever had; my master is murdered in the wood of Lettermore'; upon which the pannel said, 'Lord bless me! Was he shot?' To which the servant answered that he was shot, and said the pannel ought to go and take care of his corpse; that the servant immediately went off, but neither the pannel nor any of his family went near the corpse; and the pannel said that as he and Glenure were not in good terms, and some of the people that were to meet Glenure had arms, he did not care to go near them, not knowing what might happen; and further said that this was a dreadful accident and he was afraid

## Addresses to Jury.

would bring trouble on the country, and appeared to be sorry for what had happened." Lord Advocate

Here it is evident that, as soon as the deed was over, the pannel's first reflexion, from whatever cause that sprung, was an apprehension that it might bring himself into trouble or danger.

That same night, at the pannel's house, orders were given to the servants by his wife to hide all the arms about the house, and accordingly John Beg Maccoll and Dougald Maccoll hid a large Spanish gun that used to stand in the brew-house, and four swords. But here it is remarkable that none of the servants saw that night the other shorter gun, but of a larger bore, as you have seen, both having been produced and proved before you, concerning which Dougald Maccoll deposes, "That Allan Stewart, son to the pannel told him and his fellow-servant, that he himself had concealed the lesser (or shorter) gun that used to stand at the end of the girdle in the barn under the said girdle, where he thought it would be safe."

That same night, and after the murder was over, two witnesses have deposed that they saw Allan Breck Stewart on the hill above the house of Ballachelish, where he had lodged the night before, and not far from the spot where the murder happened. These were Katharine Mackinnes, servant to Ballachelish, a witness called by the pannel, who says, "That in the evening of the 14th of May she saw Allan Breck Stewart at a goat-house in the moor of Ballachelish after Glenure was killed, and that Allan Breck then asked her what was the occasion of the stir in the town, and that she told him Glenure was murdered; and further asked her, who might have committed the murder, and she told him she did not know"; and further says "that she told Donald Stewart" (who is nephew and son-in-law to Ballachelish), "where she saw Allan Breck, but that she did not tell him to go to the said Allan, nor did he desire her."

And this Donald Stewart deposes, that upon the evening of Thursday, the 14th of May, about nightfall, Katharine Mackinnes called him out of Ballachelish's house and informed him that Allan Breck wanted him, and that he was a little above the house on the brae (or hill): "that the deponent went up the brae and met Allan Breck, who was then dressed in a greatcoat and a dark short coat under it with white metal buttons. The deponent told him of the murder and said it could not be but that he, Allan Breck, was about it; to which Allan Breck answered that he heard of the murder, but had no hand in it; to which the deponent replied he did not believe him; that the said Allan Breck further said he believed he would be suspected of the murder, and upon that account, and as he was a deserter formerly from the army, it was necessary for him to leave the kingdom."

## James Stewart.

Lord  
Advocate

The events of Friday, the 15th May last, immediately following the murder committed on the evening of Thursday, do no less merit your attention, and these begin very early on that day, for John Macdonald of Glenco deposes, "That on Friday, the 15th of May last, the said Allan Breck Stewart came again to the deponent's house at Carnoch at 3 or 4 o'clock in the morning and knocked at a window when the family were all in bed; that the deponent went to the door of his house, and there saw Allan Breck, who gave him the first notice he had of Glenure's being murdered the evening before in the wood of Lettermore, and told him that he was to leave the country and to go the moor road leading to Rannoch, and came to take leave of the deponent and his stepmother, who is a sister of Ardsheel's; and that the deponent did not ask Allan Breck any questions about the said murder."

And with Glenco concurs Isobel Stewart, his stepmother, who also got up and went out with her stepson to receive Allan Breck's nocturnal visit at the door, and she says, "That she asked him what news up the country, to which he answered, a good deal of news, that Glenure was killed or shot the evening before in the wood of Lettermore; that he was come to take farewell of the deponent, for he was to leave the country; and that she asked him no more questions about the murder, though she asked him to come into the house, but he answered he would not stay."

Upon this incident it is an obvious reflection that neither the pannel's sister, the Lady Glenco, nor her son judged it necessary to ask any question at Allan Breck about the murder, which he now related to them, as what had happened a few hours before he came, thus unseasonably and abruptly, to take leave; these circumstances superseded the question as superfluous who it was that did it.

About 10 o'clock in the forenoon of this same Friday, the 15th, Donald Stewart, the nephew and son-in-law of Ballachelish, deposes that he met James Stewart, the pannel, in Duror, not far from his own house; and that, upon the deponent's "regretting that such an accident as Glenure's murder should happen in the country, the pannel joined with him and said that he was informed that one, Sergeant More, *alias* John Cameron, had been threatening harm to Glenure in France, but did not inform the deponent who told him so; and further deposes that to his knowledge Sergeant More has not been in Appin these ten years past."

Now, this very Donald Stewart, who is a friend and neighbour of the pannel's, had, as you have heard, the night before said to Allan Breck himself that he was surely the murderer, which was the sense and opinion of the whole country; and yet here it is very remarkable that when the thing was recent, and as

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somebody must have done it who was likely to be capable of Lord  
such an enormity, this pannel, for want of a better shift, is Advocate  
endeavouring to start a very improbable hypothesis, and to  
throw the suspicion on this Sergeant More Cameron, which, as  
it was destitute of any foundation in truth, gained no sort of  
credit or belief; and you are to consider, gentlemen, if it could  
be started by the pannel at this time for any other purpose  
than to divert the attention and the suspicions of mankind from  
his friend, Allan Breck.

The same day, about 12 o'clock, Alexander Stewart, travelling  
packman in Appin, and first cousin to Allan Breck, deposes,  
"That the pannel desired him to go to Fort-William to William  
Stewart, merchant there, and get from him five pounds or five  
guineas, and told the deponent that his friend, Allan Breck,  
was about to leave the country, as there were troops coming  
into it, and that he might be suspected of Glenure's murder;  
and that it was incumbent upon him, the pannel, to supply  
the said Allan Breck with money; and the pannel desired the  
deponent to tell the said William Stewart that he must find  
him money, though he should borrow it from twenty purses,  
and also to tell him to give credit in five pounds sterling to  
John Breck Maccoll, bouman to Appin at Koalishacoan, in case  
he came to demand such a sum"; "that, in consequence of this  
message, he went to Fort-William, where he arrived early in  
the evening, met William Stewart, delivered his message; that  
William Stewart told him he had not money, but that next  
morning he would give him his errand."

William Stewart himself, who received this message, deposes  
that it was about 10 o'clock forenoon, or betwixt 10 and  
12, that he saw the packman at Fort-William, and his wife  
swears it was about mid-day; and, if they are both in the  
right, the packman himself must have been mistaken when he  
says that he was despatched by the pannel from Aucharn so  
late as about noon that day, of which circumstance I shall  
hereafter have occasion to take some notice.

William Stewart further deposes that, at this time, he  
asked the packman "if he had come by the road where that  
unlucky murder of Glenure had happened, and the packman  
told him he did; but the deponent did not ask him who was  
suspected for it, nor had any other conversation on that subject,  
there being a great many people present in the shop at the  
time." But this apology notwithstanding (for all the people  
in the shop at Maryburgh would have been ready to listen to  
news about such an uncommon event), this William Stewart,  
who was so well acquainted with the cause of difference betwixt  
the pannel and Glenure, being so little inquisitive on this  
occasion of receiving a message from the pannel the day after  
the murder happened, seems to be not otherwise accountable

## James Stewart.

Lord  
Advocate

than by the supposition that he knew so well who were Glenure's enemies at that time, that it was improper or unnecessary for him to be inquisitive about the authors of his murder.

Dugald Maccoll, the pannel's servant, deposes, "That about 4 o'clock in the afternoon of this Friday, the 15th of May last, the pannel desired the deponent to carry the arms from the houses (at Aucharn) and hide them in the moor; that, accordingly, the deponent and John Beg Maccoll took the fore-said large gun from the back of the sheep-house under the thatch, and the said four swords from under the thatch of the barn, and found the gun that used to stand in the barn under the girdel, where the said Allan Stewart, the pannel's son, said he hid it, and carried them to the moor, and hid them in the hole of a rock above the peat moss"; "that the large or Spanish gun that stood in the brew-house was charged with powder and small drops, and that there was no shot in the small or lesser gun that used to stand at the end of the girdel in the barn"; "that they overtook Katharine Maccoll, servant to the pannel, in the brae above the house of Aucharn, with a pock or sack and something in it under her arm. The deponent asked her what she had got in the sack, to which she answered that it was Allan Breck's clothes, and that she was going to hide them; and the deponent and the said John Beg Maccoll saw her hide the sack in which the said clothes were."

This is confirmed by the oath of John Beg Maccoll, the other servant, who says they were desired by the pannel's wife to hide the arms better (*i.e.*, than they had done the night before), and by the oath of Katharine Maccoll, who says that upon the evening of this Friday her mistress, the pannel's wife, put up a blue coat and red waistcoat, with something else, into a sack, "and delivered them to the deponent, desiring her to hide them some way without; that her mistress did not tell the deponent to whom the clothes belonged, but that the deponent thought the said coat and waistcoat were Allan Breck's"; and she adds, that "some time in summer last, after the above period, Solomon Bain Maccoll, servant to the pannel, told the deponent that the said Mrs. Stewart, spouse to the pannel, desired her to conceal what she knew about the above clothes, in case she should be asked or examined about them."

On Saturday, the 16th of May, as William Stewart's wife hath deposed, that she, being solicitous to have the cows bought for her husband's use by the pannel, towards stocking a farm they had taken, gave the packman, his messenger, three guineas out of her purse; and the packman deposes that he got the money from Mrs. Stewart, after he had seen William Stewart himself on this Saturday, the 16th, who told him he would let him go immediately; and that, having got the three guineas, he forthwith returned to Aucharn, and arrived there in the

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evening, near to which place he found the pannel a prisoner; Lord Advocate  
"but the pannel's wife and the deponent, having had access to converse with the pannel apart, the pannel asked the deponent what money he had brought from Fort-William, and, upon the deponent's telling him, that he had brought three guineas, the pannel pulled a green purse out of his pocket, out of which he took two guineas, and gave them to his wife, who delivered them immediately to the deponent; and the pannel desired that the five guineas should be sent to 'that unhappy man,' meaning Allan Breck, to see if he could make his escape, and pitched upon the deponent as a person that should go with the money"; "that, soon after the pannel was carried off by a party to Fort-William," and Mrs. Stewart told the deponent that he would find Allan Breck in Koalisnacoan; and, "some time after night-fall, the deponent got his supper at Aucharn, and then the pannel's wife carried the deponent to the back of the brew-house, where there lay a sack, out of which the said Mrs. Stewart took a blue coat, red waistcoat, black breeches, a hat, and some shirts, all which she delivered to the deponent, ordering him to go with the clothes and money, to Koalisnacoan immediately and deliver them to John Breck Maccoll, bouman to Appin, if he did not meet Allan Breck himself," but directed the deponent "not to carry the clothes to the bouman's house, lest anybody might see them"; that the deponent accordingly set out that same night for Koalisnacoan.

In the meanwhile, as John Breck Maccoll, bouman to Appin, hath deposed, "Upon the afternoon of this Saturday, the 16th of May, as the deponent was in a fir bush (or thicket) near Ardnavoin, at the foot of the heugh (or deep hollow place) of Corryna-keigh, in Koalisnacoan, he heard a whistle, and, upon looking up, saw Allan Breck at a little distance beckoning to the deponent to come towards him, which he did; that, after salutations, the deponent told him he was afraid it was no good action that occasioned his being in such a remote place and at such a distance from any common road; that Allan Breck answered, the place was not very far from a common road; that the deponent, having heard the day before of Glenure's murder, charged Allan Breck with being guilty of it; that Allan Breck asked the deponent what he had heard about the murder; that the deponent answered that he had seen no person from the strath (or vale) of Appin, but that two poor women, that had come up Glenco, were telling that Glenure was murdered Thursday evening in the wood of Lettermore, and that two people were seen going from the place where he was murdered; and that he, Allan Breck, was said to be one of them.

"That Allan Breck answered, he had no concern in it, and that, if his information was right, there was but one person about the murder, and that, as he was idle in the country, he

## James Stewart.

Lord  
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was sure he would be suspected of it; but that that would give him little concern if he had not been a deserter, which would bear harder upon him in case he was apprehended than anything that could be proved against him about the murder.

"That the deponent did not believe him when he said he had no hand in the murder of Glenure, and, not caring to press it much upon him, told him, that as he was already suspected, it was dangerous to have any intercourse with him, and pressed him to leave the place, lest he should bring the deponent and his family to trouble.

"That Allan Breck said he did not doubt but that the family of Ardshiel would be suspected of the murder, and it was probable the pannel and Allan Stewart, his son, might be taken into custody about it; and that he, Allan Breck, was afraid Allan Stewart, the pannel's son's tongue was not so good as his father's, by which words the deponent understood that Allan was easier intrapped than the pannel.

"And, the deponent still insisting upon Allan Breck's leaving that neighbourhood, the said Allan Breck told him he would not leave the town" (as the witness expresses it, or the place) "for eight days, unless some necessities he expected came to him; and told the deponent, unless some money came for him before next morning, he, the deponent, must go to Fort-William with a letter; that, though the deponent refused to go, Allan Breck looked about among the trees, and, finding a wood pigeon's quill, made a pen of it, and having made ink of some powder he took out of a powder horn that was in his pocket, he wrote a letter, which he told the deponent he must deliver to William Stewart, merchant at Maryburgh. And, upon the deponent's telling him that he would by no means undertake that, as he was informed that everybody that went to Fort-William was searched, Allan Breck said it was an easy matter to hide a letter; the deponent answered, if he was caught upon the streets, what would he do with it? Allan Breck told him that the letter must not be found upon him by any means, and, if he was caught with the letter, he must eat it before it was found; that the deponent then told the said Allan Breck, that he did not know but he would be obliged to go for some beer next day to Fort-William, in which case he might possibly carry the letter; but at the same time told the said Allan Breck that, if he was caught with the letter, he would tell all he knew about him.

"That the said Allan Breck desired the deponent to go to Callart, or Glenco's house, for a peck of meal to him, which the deponent refused; and, at parting, the said Allan Breck told the deponent, he would see him next day."

The bouman further deposes to the dress in which he met Allan Breck at this time, being the black short coat and trousers

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lying upon the table, and produced to him and proved to have <sup>Lord</sup> been the property of the pannel. <sup>Advocate</sup>

Early upon Sunday morning, the 17th of May last, as both the packman and the bouman have deposed, they met near to the bouman's house, whereof the latter at first denied to the packman, that he had seen Allan Breck; and, upon the other being surprised at this, and saying he was informed he would meet Allan Breck there, and had brought some necessaries for him; and the bouman inquiring what he had brought, the packman answered, five guineas and some clothes; and told that he had a great deal of trouble in getting the money; that he had been sent by the pannel to William Stewart at Fort-William, from whose wife he got three guineas, and that the pannel or his wife gave him the other two guineas; and that the pannel's wife gave him the clothes, and informed him, that Allan Breck was to meet him at that place; whereupon the bouman owned to the packman that he had seen Breck the day before, and that he expected these things, and directed the packman how he might find Breck, if he would go to a hill he pointed out to him, near to the heugh of Corrynakeigh, and whistle once or twice, he believed Breck would come to him; but this the packman declined, telling him that he had slept none for two nights, and was very much fatigued; and, upon this, delivered to the bouman the five guineas, and told he had left the clothes at some distance, and would show them to the bouman when he was going away, and then went to sleep in the bouman's house.

After the packman had slept some hours here, he dined with the bouman, his landlord, and told him, "That the pannel, and Allan, his son, were made prisoners the evening before and sent to Fort-William; and, upon the bouman's inquiring who was suspected of Glenure's murder, the packman answered that it was Allan Breck, and that it was likely the pannel and Allan, his son, would stand the first trial for it." And about noon this Sunday the packman went away, without seeing his cousin Breck, after having pointed out to the bouman a fir tree, at the root of which he had hid Allan Breck's clothes.

The bouman further deposes (and, indeed, every word of his testimony merits your attention, and was given in a most lively, natural, and credible manner), "That, after he had gone to bed upon the said Sunday evening, he heard one knocking at the window, and, imagined it might be Allan Breck, he got up and went out in his shirt and saw Allan Breck at a little distance from the house, and, upon the deponent's coming up to him, Breck asked him if any message had come for him. The deponent told him that his uncle's son had come with five guineas and some clothes; that Allan Breck complained there was but little money, but hoped it would do his business; that the deponent told the said Allan Breck he was afraid he would

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Lord Advocate starve among the heather, and that he was not able to help him; that Allan Breck answered he had no occasion for victuals, but wanted a drink very much, upon which the deponent went back to his house and carried out some whey or some milk and water in a noggin and the five guineas, and gave both to Allan Breck; that the deponent then went for the clothes which he also gave the said Allan Breck, which consisted of a blue long coat, red waistcoat, black breeches, a hat, some stockings, and shirts.

"That the deponent told the said Allan Breck that the pannel and his son Allan were apprehended upon account of Glenure's murder; to which Allan Breck answered, that that was no more than he expected, but it would not signify much, as there could be no proof against him; but expressed some apprehension lest Allan Stewart, son to the pannel, might be betrayed by his own tongue.

"That the deponent desired the said Allan, now that he has got all the necessaries he expected, to go about his business; and the said Allan Breck promised to do so, but told the deponent that he must meet him, the said Allan Breck, next morning; that he must deliver the deponent the clothes he, the said Allan Breck, had then on, to wit, the black short coat and trousers, shown to the deponent, in the clerk's hands, in order to be kept by the deponent till he delivered them to the pannel's wife; that the deponent promised to meet the said Allan Breck next morning, but did not see him; and when the deponent went out next morning he found the said short black coat, trousers, and the noggin in which he had carried the drink to Allan Breck lying together in the place where the deponent parted with the said Allan Breck the night before, and that he has not seen the said Allan Breck since."

On Monday, the 18th of May, Allan Breck withdrew, as he had proposed, by a very unfrequented road through the moors and over the mountains to Rannoch, and came that same day to the house of Allan Oig Cameron in Rannoch, his uncle, with whom he remained till Wednesday following. The uncle hath said that he pressed him earnestly to make a clean breast, and tell him all he knew of Glenure's murder, to which Breck answered with an oath that he had never seen Glenure dead or alive. The uncle, however, frequently repeated his instances till Breck became angry, and the uncle desisted further inquiry.

Four days after Breck left his uncle's house—that is, on the 24th of May—the uncle having occasion to be fourteen miles from his own house (farther down the country), and passing by the side of a wood, "he heard a whistle from the wood, and, looking about, saw Allan Breck," who then told his uncle that his only fear was to be apprehended by the military, as he had

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been a deserter. The uncle answered, he was very sure the friends of the deceased would procure him his discharge if he could discover the murderer; and Breck replied "that they were at this time in such fury and rage that he was very sure, were he apprehended, he would be hanged."

It is unnecessary that I should resume minutely what the other witnesses said who saw Breck Stewart in Rannoch or Athole when he passed through that country at this time; his appearances bespoke the situation he was truly in, that of a malefactor studying to conceal himself and making his escape.

It is, however, material, that you should further observe that after Breck Stewart had thus disappeared from the country of Appin, where this murder was committed, everybody in that country and in that of Rannoch, through which he retired, and in both which he was well known and had relations, imputed to him the actual murder, and to no other person. You have already heard that Donald Stewart, the nephew of Ballachelish, charged him with it to his face on the night of Thursday, the 14th, when the blood of the deceased was hardly yet cold, as the bouman did on the Saturday following; and on the Monday following, Cameron, his uncle, discovered the same belief. And I have now to add upon this head of the voice of the country, or the *fama viciniæ*, that Ballachelish elder, who had been his landlord the night before the murder, says, "That the morning after the murder was committed the deponent really thought that Allan Breck Stewart might be the actor in this murder, because he did not return to the deponent again." And Macinnes, the ferryman at Ballachelish, says, "That he heard nobody suspected for the murder of Glenure but the said Allan Breck." And James Mann, change-keeper in Rannoch, says, "That, before Allan Breck came to his house in May last, it was reported in that country that he was concerned in Glenure's murder, and that he himself suspected him at the time, as he came unseasonably and was wanting provisions."

There are yet other circumstances subsequent to the murder and to the pannel's commitment at Fort-William that deserve your consideration with the rest of the evidence. One of these is deposed by Hugh Macclean, barber in Maryburgh, who says that one day being called by the pannel to shave him—he thinks upon a Saturday—the pannel asked him what news he heard in the town. The deponent answered that he (the pannel) was to be carried to Edinburgh on the Monday following, whereupon the pannel said that was a matter that gave him no concern, and wished it had happened sooner, and was afraid of nothing, but that his servants might be enticed to take money and turn against him; and desired the deponent, as from him, to tell his servants to say nothing but truth, to

## James Stewart.

Lord  
Advocate keep their minds to themselves, and he would take care of them; and accordingly the deponent delivered the pannel's message in his own words to two of his servants who were then in separate custody in the same prison, and that they were both of the name of Maccoll.

Again, gentlemen, you have heard read—and, I dare say, with much regret—the examination of the pannel's wife and daughter taken before the Sheriff upon oath, wherein they say that Allan Breck Stewart came to the pannel's house on Monday, the 11th, in his French dress (that has been often described), and that he went away next morning, after taking leave of them, dressed in the same habit; and you have heard by what a cloud of witnesses it was proved that from the evening of Monday, the 11th, till the morning of Monday, the 18th, Allan Breck was seen in no other dress than the short coat and trousers belonging to the pannel, now lying in Court; and, by the pannel's own servants and the packman, it has been proved that Breck's French clothes were, by Mrs. Stewart's order, put into a sack and hid in the moor near the pannel's house, from thence brought back by the same servant-maid, by order of Mrs. Stewart, and by her delivered to the packman, by him to be carried to Breck at Koalisnacoan, and that the maid-servant who was employed by her mistress to hide these French clothes and to fetch them back again was, by a message from her, desired to conceal what she knew about the clothes in case she should be asked or examined about them.

These, I think, gentlemen, are the most material facts and circumstances that have been proved before you, which I have resumed in the order of time as they happened, with intent to give you a just view of the case of the pannel whom you are now trying; and I am persuaded that the reflections which naturally arise from these facts in respect of the question before you must have occurred to yourselves when you heard the evidence given and when I have again resumed it, and therefore my observations to you upon the whole shall be as few and as short as possible.

I have admitted that it is incumbent upon me in this trial, as against James Stewart, the pannel, to make out that Allan Breck Stewart was guilty of the actual murder in question, and I apprehend that is done to full conviction upon these considerations.

And, first of all, gentlemen, here has been a very extraordinary and shocking murder, committed within the country or district of Appin, in the most northern part of this county, of a gentleman who had an estate and relations in that neighbourhood; a man of fair character, who was going about the duty of his office, in the King's and the public service, intending no injustice to others, and apprehending no harm to him-

## Addresses to Jury.

self, for he and all his attendants were unarmed, and yet he is bereaved of his life, not by an open enemy upon a declared or sudden quarrel, but basely assassinated and shot behind his back by a person lying in wait and lurking among trees for that purpose.

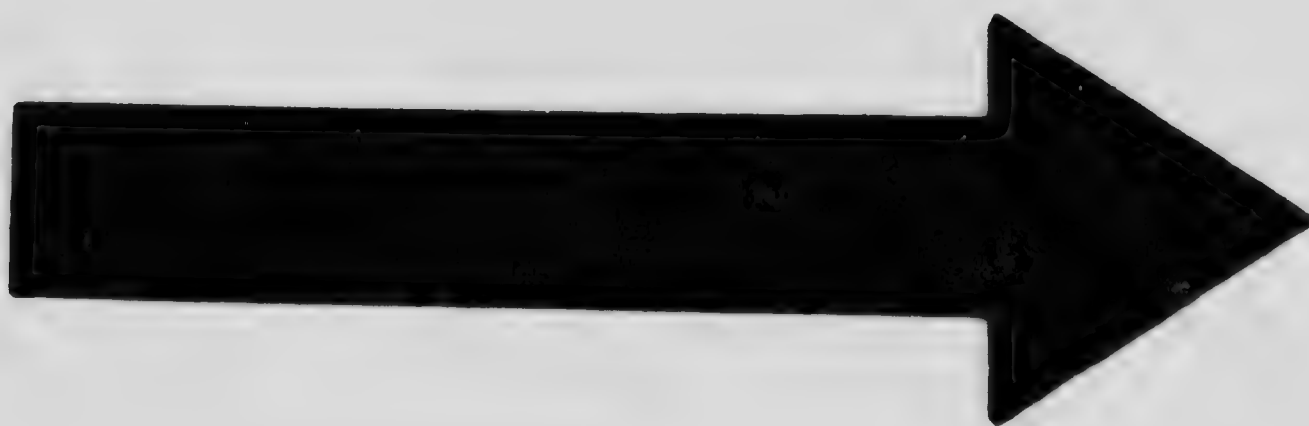
Lord  
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This, gentlemen, is a very strange and shocking event, and as for every event there must be a cause, somebody must have done it, and upon some reason or temptation such as it was. And this is not like a murder committed on the streets or on the highways leading to a populous city, but in the corner of a country where the deceased was himself a gentleman of note and where everybody of any note is known to everybody. The deceased, therefore, must have had one or more enemies fit or capable, or likely to have devised or perpetrated such an action, and who these are, you have been now for many hours inquiring.

And upon the result of that inquiry what doubt can there be in the first place, that Breck Stewart was the actor? His character and his situation as a deserter from the King's service, and now actually listed in the French service, and in this country only as a sojourner for a visit to his friends, rendered him the most likely person then resident in that country for being guilty of such a thing; nay, so much the only person likely, that the pannel himself, when he cast about for some other man on whom the suspicion of this guilt might be thrown, mentioned only one—Sergeant More Cameron, who is of a character and situation very similar to that of Allan Breck, but with this very material difference indeed, which rendered it impossible for that solution of the question to pass, that Sergeant More had not been seen in Appin for several years past, and surely the absent wanderer could not do it.

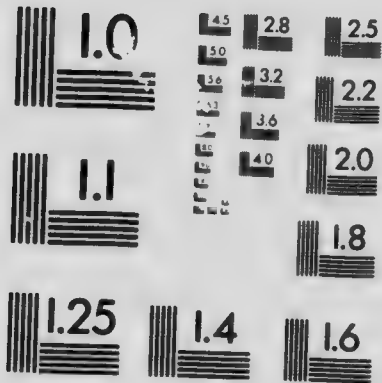
But next, and more closely, the only known quarrel that any body had with the deceased was that of this pannel, James Stewart, about his own removing the last year and the removing of other tenants of Ardsheel this year, into which quarrel his former pupil or ward and intimate friend, Breck Stewart, had most vehemently entered, and discovered that on several occasions, and that he considered it as a cause for deadly or mortal hatred, in so much that the pannel himself hath declared, "That if Allan was guilty of the murder, he believes it behoved to be on account of the disturbance given to the tenants on the estate of Ardsheel; and knows no other [cause]."

And, more closely still, you have heard evidence of what passed immediately before and after this murder, of the behaviour and actions of this Breck Stewart, who had formerly displayed his hatred to the deceased for this very cause, frivolous and



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## James Stewart.

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unjust as it was. On the 10th of May, at Fasnacloich, within a mile of Glenure's house, he gets intelligence of Glenure's motions and designs to proceed in removing the tenants of Ardshiel when he should return from Fort-William. On Monday, the 11th, he comes to the pannel's house, and there lays aside his French dress and puts on a country dress belonging to the pannel, and in the same habit next day sets out to Ballachelish, hard by the ferry over which the deceased was to return; from thence he goes to visit two sisters of the pannel's in the neighbourhood; he returns to Ballachelish on Wednesday; remains there that night and till about noon next day, when he takes a fishing rod in his hand, a fit pretext for going out alone and for staying some time; but soon after the fishing rod was laid aside, and he goes in pursuit of his real game. He calls aside the ferryman and inquires if Glenure had yet crossed the ferry, and, being assured he was not, he walks off, and was never again seen about that ferry or the house of Ballachelish, but a few hours after, that same night, and when the murder had been committed, he is seen by Katharine Macinnes, the maid-servant of Ballachelish, at the goat-house in the moor of Ballachelish. And if Donald Stewart speaks true, there also he saw him, and charged him with the murder. Here was, then, the deserter, now a foreign soldier, and one declared mortal enemy of the deceased, inquiring for the deceased a little before he passed the ferry, and, soon after the murder, found in the hill near to the spot where it happened, and adjoining to the house where he had lodged the night before, but to which he never returned; but, instead of that, wanders in the fields, beats up Glenco and his mother betwixt three and four in the morning, tells them Glenure was murdered, and he was going abroad, takes leave of them at the door, retires from thence to a den in a desert, the heugh of Corrynakeigh in Koalishnacooan, where he was to wait for his baggage and his promised viaticum, and where he durst not even venture to approach the bouman's house, except to come to the door or the window in the night, and, when he had got these necessities he waited for, withdraws, as he proposed, across the kingdom, over a tract of moors and mountains uninhabited, till he came to his uncle's house, and is by him, as well as everybody else who knew him, reputed and believed to be the murderer. And I have no doubt, gentlemen, but after the proof of all these things which you have heard, you must be entirely satisfied that he was truly such, and, upon that persuasion, will proceed to the main question that is directly before you, namely, the evidence of the accession of this pannel to that murder, which may be summed up in the articles following.

First of all, that it was the quarrel of this pannel against Glenure, that had been only taken up and espoused by Breck

## Addresses to Jury.

Stewart, for which Breck committed the murder itself, as the immediate actor. The quarrel, as you have heard, or the cause of offence so highly resented, was that this pannel was himself removed from his possession last year by Glenure, who at the same time withdrew from the pannel, or forbore to employ him in the office of an assistant or sub-factor, which had given him interest and influence with the tenants of Ardshiel, and that this year he was insisting to remove three or four tenants whom the pannel had lately placed there, in all which Allan Breck had no personal interest or concern—a strange cause of offence, I admit, to be so highly taken up and so deeply resented; but every provocation works, according to the temper or turn of mind of the person who receives it, and what those of the pannel were in this respect you have heard from the evidence, and have seen in his conduct before you, when he himself objected to Stewart in Lagnahaw as an incompetent witness against him, for that the witness bore him capital enmity, because he, the pannel, had been instrumental in causing the witness to be removed from the possession at Aucharn, in which the pannel succeeded him; nay, the pannel carries this madness so far as to have threatened Ewan Macintyre and his relations or posterity, a poor herd, who had never served the pannel himself, for no other offence than that he engaged to be herd to Campbell of Ballieveolan, the tenant who succeeded the pannel in the farm of Glenduror, from which he was removed last year.

The second article in proof is that, in consequence of the deep resentment conceived by the pannel for this supposed injury of the removings, he discovered, upon several occasions previous to this murder, an intention or desire to take away the life of Glenure. This he expressed to Appin's bouman in a most inveterate manner, that he would be willing to crawl upon his knees to a window to shoot Glenure; but thereafter he proceeds further than expressions. His conversation with the Maccolls, his own servants, in the brew-house about Christmas last, could be intended for nothing but to instigate them, either by themselves or by finding out proper instruments among the common people of Appin, to cut off Glenure; and, when the late removings came to be in agitation last spring, which the pannel set himself to oppose with all his might, it appears that his malice and fury against Glenure were increased; witness his conversation with his two landlords on his way to Edinburgh and with Mr. Maclaren, of Stirling, his fellow-traveller part of the way, in which, among other things, the pannel told them that he had actually sent Glenure a challenge to fight him with pistols, and told Maclaren (who says he found the removing was much at the pannel's heart) that, if he should get relief, neither at Edinburgh nor at the British Parliament, he would take the only remedy that remained. Now, to a man that laboured under

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this distemper of mind, it was natural or incident that, after he had returned from Edinburgh at the end of April, with such degree of success as to obtain a Sist on his Bill of Suspension, and had some hopes given him at Edinburgh that, when the Barons of Exchequer should meet, they would countermand these removings; when he had called the tenants together and acquainted them with these operations of his on their behalf, and sent them with a notary on the 1st of May 'o intimate the sist to Glenure; and when, after this, he learned, on the 11th of May, that Glenure had gone to Edinburgh in his turn and got the Sist removed, was come back to the country and to proceed in the removings; that, from this fresh disappointment and affront, that must lessen him in the eyes of those tenants whereof he had assumed to be protector, the resentment and hatred which he formerly bore Glenure should be yet higher inflamed, and drive him on to send out Breck, his emissary, to cut off the gentleman whom they both looked on as their enemy, in hopes of safety to Breck, the actor, by his getting abroad where he was to go, however; and to himself, the mandator and accomplice, by his remaining in appearance quiet at his own house.

And the evidence, that in fact this was the case, consists of these further circumstances, of which you have heard the proof, that the actual murderer of Glenure, in the quarrel of this pannel, and in resentment of which this pannel had discovered designs or intentions against his life when the quarrel itself was wrought up to its highest pitch, set out from the pannel's house, leaving his own clothes and baggage there, dressed in a suit of the pannel's clothes, fitter for the purpose, as being less remarkable or distinguished than his own; goes directly and puts himself in the way of Glenure; passes his time whilst he waited for him visiting the sisters of this pannel in that neighbourhood, and with Stewart of Ballachelish, who was also in the general interest of the pannel in respect of the removings; retires when the bloody deed was done to a deep retreat that was not far off, where he remains till this pannel caused to be sent him his baggage and a viaticum of money, such as he could afford or scrape together, to enable the assassin to get off.

And that this aid and succour was sent in consequence of a concert betwixt them, previous to the murder itself, appears from these circumstances that on the morning of Thursday, on the evening whereof the murder was committed, the pannel sent an express to William Stewart at Maryburgh, earnestly pressing him to send him eight pounds as the price of cows not yet delivered; and it hath not been explained, and far less proved, on the part of the pannel, who is a man of some credit and substance, though he had then but little cash in hand, what other pressing exigency he then had for an immediate supply of money, when

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he was living upon his own farm at Aucharn. He has not showed you that he had accepted a bill payable on Friday, the 15th of May, or the term of Whitsunday this year, or that he was under distress of any kind that required such immediate supply.

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Again, as the messenger of Thursday brought back no cash, there is another sent on Friday, being the packman, the cousin-german of Breck Stewart himself, who carried two commissions from the pannel—first, that by all means he should send him five guineas, and this, though William Stewart should borrow it from twenty purses; and, secondly, to tell William Stewart to give credit in five pounds sterling to John Maccoll, bouman to Appin at Koalishnacooan, in case he came to demand such a sum, the pannel at the same time telling the packman when he gave him this message that Allan Breck was about to leave the country; that he might be suspected of Glenure's murder; and that it was incumbent upon him, the pannel, to supply Allan Breck in money.

Now, gentlemen, to this message from the pannel to his friend, William Stewart, by the cousin of Breck Stewart, you are to join another corresponding circumstance deposed by the bouman, to which I must call for your particular attention, for, in relating what passed betwixt him and Allan Breck on the afternoon of Saturday, the 16th, he swears that Allan Breck then told him he must remain there till some necessities he expected came to him, and that, "unless some money came for him before next morning, he, the bouman, must go to Fort-William with a letter," which Allan Breck then wrote to William Stewart, merchant, Maryburgh. Does not this plainly speak out, *rebus ipsis et factis*, the concert betwixt the pannel and Allan Breck before they parted, as if you had heard it from witnesses present at their conference? Breck was setting out for an exploit which, if performed, it would require a little money (of which he, it appears, was then destitute, or very scarce), to carry him off the country; the pannel himself was not then in cash; but the assurances he gave to Breck must have been that, without loss of time he, the pannel, would send the money directly to Breck at Koalishnacooan, or otherwise send him credit upon his, the pannel's friend and correspondent, William Stewart, merchant in Maryburgh. Their respective actions correspond exactly with this concert, and are unaccountable without supposing it. On Friday the pannel sends to William Stewart for five guineas in cash and an order to give credit to Appin's bouman for £5 more, in case he should call for it. On Saturday, Allan Breck being with this bouman at a place distant from the pannel, tells the bouman that unless money came for him before next morning, he, the bouman, must go to Fort-William with a letter, which Breck then wrote to the same William Stewart,

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**Lord Advocate** merchant at Maryburgh, and such a letter that, Breck tells the bouman, if he was caught with it, he must eat it before it was found upon him.

These circumstances are so pinching against the pannel, upon the capital point now in issue, that he has made an attempt to prove an answer or solution of this difficulty, and that by bringing Katharine Macinnes, then servant to Ballachelish, to depose that when she met Allan Breck at the goat-house upon Thursday night "the said Allan desired her to tell Donald Stewart in Ballachelish to go to the pannel, and desire him to send the said Allan money"; and that she delivered this message to Donald Stewart that same night.

Again, this Donald Stewart hath deposed, not that Katharine Macinnes delivered him any such message from Allan, but that she called him out and told him that Allan Breck wanted him, and was a little above the house, in the brae or hill, "where the deponent went and met Allan Breck, who then told the deponent he was going immediately to leave the kingdom, and was going then for Koalisnacoan"; and "desired the deponent to acquaint the pannel that he was gone to that place, and desired him, if possible, to send him money there; and the deponent then promised to acquaint James Stewart of the above message." And this Donald Stewart further deposes, "That after his conversation with the pannel about Sergeant More he delivered the above message from Allan Breck to the pannel, and that the pannel did not say whether he was to send the money or not; that this conversation happened about 10 o'clock in the forenoon of Friday, the 15th of May last, and that there was nobody present."

And, as I think the only plausible thing proved for defence of the pannel consists of these two testimonies I have just repeated, I must beg your attention, gentlemen, to the remarks I have to offer upon them, that you may be the better able to discern what degree of credit or effect they deserve, or whether they deserve any at all.

And, first of all, this Donald Stewart is nephew and son-in-law to Ballachelish, and lives in family with him; and it appears the whole family are in the general interest of the pannel, for John Stewart, the younger of Ballachelish, the brother-in-law of this Donald, hath deposed, "That, in the time of the Spring Circuit in this place in May last, he was summoned to be of the jury; but that, at the earnest request of the pannel that he should be present with a notary at the removing of the tenants from the estate at Ardshiel, he was agoing on that errand to the pannel's house, but returned to Appin upon hearing of the murder committed that day"; and has further deposed, "That he was in Edinburgh in August last, and was present at consultations of the pannel's lawyers and agents touching his

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defence." You are therefore to weigh the credit due to a single witness of that family, swearing to a fact or conversation betwixt the pannel and him when there was nobody present, that they have judged material to be proved for the pannel. Lord Advocate

Secondly, I have already observed to you, in resuming the evidence of these two witnesses, the son-in-law and the servant-maid of Ballachelish, that there is a manifest discrepancy between them, though it is not a long time since the fact they depose to happened, and it hath ever since been the subject of attention and conversation in the country where they live, for the maid says she received a full message from Allan Breck and delivered it to Donald Stewart; and that "she did not desire Donald to go up to Allan in the hill, nor did Allan Breck desire her to send Donald to him there"; and yet Donald swears that the maid informed him "that Allan Breck wanted him," and told him where Breck was; and that Breck himself gave him the message to be delivered to the pannel, which he delivered accordingly about 10 o'clock next day to the pannel, whom he met alone in the fields. So that the whole of this tale attempted to be proved by these two witnesses appears extremely suspicious, and their accounts hang not well together.

Thirdly, Donald Stewart's tale, if it be true, and if it be also true that the packman was not sent away by the pannel to Fort-William till about 12 o'clock on Friday, might serve to account for, or to have given rise to, the packman's message on that day; but how will it serve to account for the former express sent upon the morning of Thursday by the pannel to the same William Stewart at Maryburgh, to send him down immediately £8 sterling by the bearer?

Fourthly, if it be true, which both William Stewart and his wife depose, that the packman came to them at Fort-William upon Friday betwixt 10 and 12, as the husband says, or about mid-day, as the wife says, then the packman must have been mistaken in the hour that he was despatched by the pannel from his house, when he says it was about 12 o'clock that day; and if Stewart and his wife are rather to be believed that he got to Fort-William by noon, he must have been despatched by the pannel long before 10 o'clock, when Donald Stewart says he delivered Breck's message to the pannel.

And, lastly, that which affords a solid and satisfying reply to the defence founded on these two testimonies of the son-in-law and servant-maid of Ballachelish is this consideration, that, supposing it true, for argument's sake, which they have sworn as to the substance, that Breck sent notice by Donald to the pannel that he was going to Koalisnacoan and wanted money, how will that account for what was observed a little while ago—of the pannel's writing a letter upon Saturday afternoon to be sent by the bouman to William Stewart at Maryburgh? For,

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though here be a tale, I'm afraid, lately invented by the pannel, of a message from Breck to him after the murder to tell the place of his retreat and that he wanted money, he has forgotten to provide witnesses for proving another thing, and that is a message in return from the pannel to Breck to give Breck notice how the money was to be found or furnished, namely, by the pannel's giving credit to him or the bouman upon William Stewart at Maryburgh, for, without such notice, how could Breck from the bottom of his heugh in Koalisnacoon so exactly co-operate with what the pannel was doing from his own house at Aucharn, as to write a letter on Saturday to the same William Stewart, merchant in Maryburgh, to be sent by Appin's bouman, to which William Stewart on Friday the pannel sends Breck's cousin to bid him give credit to Appin's bouman for £5 if he should call for it?

This circumstance, therefore, which is quite unanswered, as well as the express on Thursday morning for money before the murder happened, makes the evidence before mentioned remain in full force, the tales of the message to the pannel mentioned by these two witnesses notwithstanding.

There hath been hardly anything else proved for the pannel's defence that merits a reply. It is of no moment that this was not the first time that Breck Stewart made use of the pannel's habit or clothes above mentioned. He had used them once before in the month of April, when he went to Rannoch, whilst the pannel was at Edinburgh; but it was not the less true that this habit was far more commodious for the murderous purpose he went about when he left the pannel's house on Tuesday morning, the 12th of May, than his own French clothes would have been.

Again, it is true that on the morning of Thursday he writes a letter for a notary to take protests against the removings at the same time that he writes for £8, and his counsel have said that this was pursuing quite another scheme; but this is by no means conclusive to prove his innocence. He was galled and incensed by these removings, and his protest by a notary, after his Bill of Suspension was refused, would be of very little avail, and yet he writes for one to attend, to be provided for all events, as it was a possible case, that the intended murder of Glenure might have been prevented by his going another road than the common one, or other accidents.

And as little can it avail the pannel that after he was in custody he wrote a letter to Mr. Macfarlane at Edinburgh describing Allan Breck and expressing a desire that he might be apprehended; for this was a letter shown to Colonel Crawford, the commanding officer, and now appears to have been a manifest dissimulation, when, by the showing of the pannel's own defences, he sent money to Allan Breck in order to help

## Addresses to Jury.

him to escape an account, as he says, of his relation and having been formerly his ward or pupil. Lord  
Advocate

When, therefore, gentlemen, you shall consider and duly weigh the whole facts and circumstances proved before you, and which I have now resumed, and when to these I have last mentioned you shall add, that, besides the clothes and the money furnished to Breck, there is a strong presumptive evidence that the very lesser or shorter gun produced before you, and proved to have been the pannel's, and which is of the wider bore of the two, was the very instrument with which the murder was committed, for none of the servants saw it upon Thursday night when they hid the arms, and when they saw it on Friday night, when the arms were carried up the hill, it was empty; and Captain Chapeau and others have deposed it appeared to them to have been lately fired when he found it on the 23rd of May; that the pannel, on the first notice he received of the murder being over, discovered an apprehension that he himself might be brought to trouble on that account; that he made an attempt, though a very unavailing one, to throw suspicion of the murder upon Sergeant More Cameron, who had not been in that country for many years; that the pannel being in custody sent a message by his barber to his servants to keep their minds to themselves and he would take care of them; that his wife and one of his children have too strongly discovered their sense of the importance of the article of the clothes furnished by the pannel to Breck by swearing that Breck left their house in his own French clothes, though the wife, at least, most certainly knew the contrary.

I say, gentlemen, when you put all these things together, you will form your opinion and pronounce accordingly whether this pannel is or is not guilty of accession to this horrible murder. In all circumstantial evidence there is a possibility of innocence, even without supposing any of the witnesses perjured. For example, in the case of Stewart Abercrombie, which you heard mentioned in the debate on the relevancy in this trial, it was urged for him—and very truly—that some other man without a hat, as well as he was, might have been the murderer of the deceased, for there was no witness who could swear he saw him do it; and in the other case (M'Cowan) you heard mentioned, who was convicted principally upon a shirt and stockings being found in his possession which the poor woman had carried with her from home, it was possible that M'Cowan might have got these garments immediately or by progress from some other person who had robbed or murdered the poor woman. But in both these cases the pannels were convicted, and suffered accordingly.

And in the present case, if, notwithstanding what you have heard, you can believe that Breck Stewart committed this

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murder purely on his own accord and without any privity or previous concert with this pannel and that the aid given by the pannel to carry him off, was out of mere compassion and a resolution first taken after the pannel had heard of the murder itself, then, surely, it will be your duty to acquit the pannel; for better that this murder, atrocious and scandalous as it is, should remain unavenged by human justice than that one innocent man should suffer.

But, on the other hand, if, upon the whole evidence, you cannot believe the pannel innocent, but are convinced in your own minds that he has been knowingly accessory to this murder, then, doubtless, your duty to God and your country requires of you to pronounce him guilty.

**Mr. Brown**

Mr. BROWN, for the pannel—Gentlemen of the jury, I appear for the pannel, and as this trial has already taken up a great deal of time, I shall not follow the honourable and learned gentleman on the other side in some things which I conceive to be extraneous to the matter in issue, but shall endeavour to sum up what I have to say in as few words as the importance of the case and variety of matters to be considered will admit of.

As I am at all times under no small degree of concern as often as I appear in any case of this nature, so, I must acknowledge, I am at present under greater concern than ever I was in any former case when I consider the many disadvantages which this unfortunate pannel labours under.

In the first place, I am under the necessity of entering the lists with a learned gentleman of great abilities and of much more experience in these matters than I can pretend to.

But, gentlemen, if I have undertaken what I am not sufficient to do, the fault lies at the door of the private prosecutor, who, before the prosecution was commenced, began early with pre-engaging the whole counsel at the bar who had most experience in these matters, not with an intention that they should assist in carrying on the prosecution (for many of the gentlemen who were engaged have not appeared at the trial), but with an intention that they might not have it in their power to appear on the side of the pannel.

A just prosecution scarcely stands in need of an advocate to support it. What, then, shall be said of a prosecution where the prosecutor despairs of prevailing otherwise than by depriving the pannel of those who are most able to defend him?

For my own part, I choose rather to have it said of me that I had imprudently undertaken what I was not sufficient for, than that I had uncharitably refused to give any poor assistance in my power to a gentleman who imagines that I can be in the smallest degree useful to him.

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I might also take notice of many other hardships of which **Mr. Brown** the pannel has suffered, from close confinement during more than four months, contrary to the great charter of liberty in this part of the kingdom—from the unwarrantable seizure of his papers without any legal authority, and from the shortness of the time allowed him for making his defence: but these things have been so fully insisted on by the gentlemen who have spoke on the same side that it is unnecessary for me to repeat what has been already said. The facts have not been denied by the prosecutor, and, as every man must see at first sight, what a prodigious loss it is to a pannel to have access for so long a time denied to every person who was capable of assisting him in making his defence, so I must be forgiven to say that if this trial was at all proper for a Circuit Court (which may be doubted), it ought to have been brought on in the ordinary form by way of presentment, and not summarily in the form of criminal letters. By the former method the pannel would have had upwards of three months to prepare for his defence, instead of fifteen days, which is all the time the pannel has had since the criminal letters were executed against him.

But, gentlemen, there is yet another disadvantage which this pannel labours under which gives me more uneasiness than all those I have already mentioned, and which, I must beg leave to say, I dread more than all the proof which has been brought against him.

What I mean is an impression which has been industriously raised and artfully propagated as if it were somehow necessary that the pannel should be found guilty, and as if his being acquitted might bring a reflection on this part of the kingdom.

Gentlemen, I do not expect, nor do I desire, that you should return a verdict contrary to evidence: but it is my duty to put you on your guard not to allow yourselves to be carried off by passion or prejudice, and though I have no doubt of the integrity or honour of any of the gentlemen to whom I now address myself, yet, upon this occasion, it is my duty to say, that if you find the pannel guilty, either without evidence or upon doubtful evidence, you will thereby bring the blood of an innocent person upon your own heads—I say, an innocent person, for every man is held to be innocent till he is convicted, not by doubtful, but by legal and complete evidence.

And, if the evidence is insufficient, which I am hopeful I shall be able to show, I am under no apprehension that your acquitting the pannel can ever bring any reflection on yourselves or upon your country. It is the peculiar opinion of this part of the island that in capital cases the law is so necessary that the whole of the evidence should be taken

## James Stewart.

Mr. Brown in writing, and as that has been fairly done in the present case, the authentic record will satisfy every reasonable and thinking person that the grounds upon which we have proceeded were solid, and, if you have the approbation of such, you ought to disregard what others may say of you.

Having said so much in the general, I shall now proceed to consider the crime which has been charged against the pannel and the evidence which has been brought in support of that charge. As to the crime itself I readily agree with every one of the gentlemen who have spoke before me, that it is of so atrocious a nature that words can hardly be found strong enough to express in proper colours its enormity; and I shall also admit that it is highly aggravated from the particular circumstances which have been very properly mentioned by the honourable gentleman on the other side. But, then, the prosecutor would do well to observe that the more atrocious the crime is the more natural it is to presume that the pannel was not guilty of it. And it is my duty to put you on your guard that a just indignation at the heinousness of the crime may not lead you to condemn without proper evidence. For, however foul the crime may be, it is much better that it should escape unpunished than that an innocent person should suffer for it.

The crime charged against the pannel is that he entered into a conspiracy with Allan Breck Stewart to murder Colin Campbell of Glenure by the hands of the said Allan, and that the murder was accordingly so committed. And, therefore, before the prosecutor can prevail, it behoves him to prove not only that the murder was committed by the hands of Allan Breck, but also that the pannel and he were previously in a conspiracy to commit the murder in that manner.

The prosecutor pretends not to have brought any direct evidence of either of these facts, but the guilt of both pannels is inferred from a variety of circumstances, which it now belongs to us to consider, so far as is necessary for the defence of this pannel.

And here I shall not dispute the general proposition laid down by my Lord Advocate, "That crimes may be proved by circumstances." I admit that any crime may be so proved, but, then, I humbly contend that the circumstances ought to be such as necessarily infer the guilt of the pannel.

In order that this matter may appear in its proper light, I must beg leave to lay down one general rule, which admits of no exception, and ought to be strictly followed in judging of all circumstantiate evidence, which is, that where any fact proved against the pannel is in its own nature such that it will naturally admit either of a good or a bad construction, that construction ought always to be received which is favourable for the pannel.

## Addresses to Jury.

This is founded upon the first principle of natural justice, **Mr. Brown** which directs us "To do to others as we would have them do to us"; and as every one of you would think yourself hardly used if a bad construction were put upon any action of yours which would naturally bear a good one, the pannel asks no more than that you should judge of his actions by the same rule.

As here, gentlemen, I do not mean to say in a circumstantiate evidence it is necessary that every circumstance taken separately should be conclusive. If that were necessary few crimes could ever be proved, but what I intend is that in all crimes whatever it is necessary that the proof should be certain and conclusive, and, as the law justly rejects all arguments drawn from conjectures and forced consequences, it is not sufficient to say that a pannel that he might have been guilty of the crime charged, but the proof ought to be such as to leave no room to doubt that he was so, and though it is not necessary in a circumstantiate evidence that every circumstance considered apart should be conclusive, yet I conceive I may lay it down as a certain principle that where the whole of the circumstances are such that they might naturally have happened without inferring the guilt of the pannel, such circumstances, however numerous, ought to have no authority against him.

To apply this rule to the present case I am hopeful I shall be able to satisfy you, gentlemen of the jury, that the facts charged against the pannel are either not proved or they are such that all of them might have naturally happened, and at the same time the pannel be entirely innocent of the crime of which he is accused.

But before I proceed to consider particularly the several articles of the proof brought against the pannel, it will be necessary to put you in mind of some things which happened previous to the murder, as these may tend to explain many things which occur in the proof, and which shall be afterwards particularly taken notice of.

You have already heard from the gentleman who spoke first on the same side with me, that in the month of February, 1749, the deceased Colin Campbell of Glenure was appointed factor by the Barons of Exchequer upon the forfeited estates of Lochiel, Callart, and Ardshiel, and as the pannel, who was then tenant of part of the estate of Ardshiel, had always lived in great friendship with Glenure, and had as fair a character as any gentleman in that part of the country, the management of the whole estate of Ardshiel was committed to him by Glenure, and his bill was taken for that yearly rent at which the estate had been rated after survey by the Barons of Exchequer, leaving it to the pannel to apply the surplus to the use of Ardshiel's children. This is proved by several letters

## James Stewart.

Mr. Brown and receipts produced, and, in particular, from Glenure's letter to the pannel, dated 11th December, 1749, in which he writes as follows:—"This moment I had yours by your servant with £20 18s. 5d. sterling, and the warrant I formerly gave you. Receive inclosed your note. Your payments are very good for which I am obliged to you. I intend, God will, to be at Edinburgh on, or a day or two before, the 25th current; that is, I intend to set out from this place this day or tomorrow eight days, and will go by Glasgow, and make no stop by the way. Remember Lady Ardschiel's discharges, and all your other tackling. I heartily wish you a good journey."

About the month of April, 1751, Glenure applied to the pannel to give up the farm of Glenduror, which he then possessed, to Mr. Campbell of Ballieveolan, Glenure's particular friend, who, it appears, had offered an additional rent, and though the pannel had not been legally warned, and so was not obliged to remove for that year, yet he readily agreed with Glenure's proposal, removed from the possession, and took from Mr. Campbell of Airds the farm of Aucharn, where his family now resides; but he still continued to uplift the rents as formerly from the tenants of Ardschiel, and likewise to possess a small farm called Lettermore which he had sublet at about £6 sterling per annum.

In the month of April last Glenure executed a warning, and had obtained a decreet of removing against no less than five or six tenants of the estate of Ardschiel, and also against as many tenants of the neighbouring estates of Lochiel and Callart, decerning them to remove from their respective possessions as at the term of Whitsunday last; and, among the rest, the pannel's two sub-tenants in the farm of Lettermore were also decerned to remove.

This was complained of as a very great hardship in that part of the country, more especially as the tenants in possession paid their rents regularly, and were willing to take the oaths to the Government; and although the pannel's private interest in the matter was not great, yet, as he foresaw that a procedure so severe might be attended with disagreeable consequences, he went and often expostulated with Glenure upon the subject, but he, having persisted in his resolution, the tenants upon all the three estates transmitted Memorials of their case to be laid before the Barons of Exchequer, and, as the pannel was then occasionally at Edinburgh about some private affairs of his own, he presented the memorials to one of the Barons, who disapproved greatly of Glenure's conduct, but could do nothing towards putting a stop to the removings, as a quorum of the Barons could not be held till the next Exchequer term, though, at the same time, he undertook to represent the case to the whole Barons, adding that he made no doubt but they

## Addresses to Jury.

would give him an order to the factor to continue the tenants **Mr. Brown** in possession, which in part appears from a letter wrote by the pannel to Charles Stewart, writer, dated 27th April, 1752, and referred to in the inventory subjoined to the libel, in the following words:—"Yesterday I arrived here, after a very troublesome jaunt; and as the Barons could not be got together, put it out of my power to procure an order for our factor; but Baron Kennedy, who I found very kind, and seemed to sympathise much with the tenants' case, gave it as his private opinion that they should sit their possessions for this year, and that all justice would be done them; and thought they should take a Protest against the factor's proceeding in a body—I mean the Mamore and Appin tenants. The same advice I had from all I advised with, who were not a few, and all were of the same mind, that the tenants had a good chance, once their affair came before the Barons."

Upon this the pannel advised with counsel how the tenants might be kept in possession till the Exchequer term, and by their advice applied to the Court of Session for a Suspension of the removing; and, a Bill of Suspension having been accordingly presented, a Sist was obtained, and the Bill ordained to be answered, which Sist was intimated to Glenure upon the pannel's return to the country; but Answers having been thereafter made to the Bill by Glenure, who had gone to Edinburgh for that purpose, as the pannel had, through ignorance of the forms, carried off with him the principal Bill with the Sist upon it, the Answers were advised without the Bill, and the Bill refused by an interlocutor of 5th May last.

Upon Saturday, the 9th of May, Glenure returned to his own house in the country, and so soon as it came to be publicly known that the Bill of Suspension was refused, and that upon Friday, the 15th of May, being the term day, Glenure was to execute the warrant of ejection against the tenants of Ardshiel, it was resolved, in consequence of the advice the pannel had got from Edinburgh, that the tenants should take a Protest against Glenure in case he should attempt to put his warrant of ejection in execution, and that they should continue in possession notwithstanding thereof till such time as their case should be fully heard before the Barons, and that their direction should be known.

Accordingly, in prosecution of this plan, upon Tuesday, the 12th of May, the pannel wrote a letter to Alexander Stewart, writer in Glenettie, desiring him to come and act as notary to the Protest intended to be taken against Glenure, and at the same time he prevailed upon two gentlemen of character in the neighbourhood, viz., John Stewart, younger of Bal-lachelish, and James Stewart, younger of Fasnacloich, to undertake to attend as witnesses and assist at taking the Protest;

## James Stewart.

**Mr. Brown** but the said Alexander Stewart, the notary, having happened to be out of the way when the pannel's servant went to his house, and this having been notified to the pannel upon the morning of Thursday, the 14th of May last (the day on which Glenure was murdered), he despatched a servant of his own very early with a letter to Charles Stewart, writer at Auchintour, informing him of the disappointment he had met with by the absence of the notary to whom he had first wrote, and desiring him (the said Charles) to come to his house with all possible expedition that night in order to act as notary to the Protest intended to be taken against Glenure next day.

In this situation matters stood upon Thursday, the 14th of May last, being the day upon which this most execrable murder was committed; and, therefore, the facts previous to the murder being adjusted, I shall now proceed to consider evidence which has been brought for proving both branches of the libel—first, that the murder was committed by the hands of Allan Breck; and secondly, that it was committed in consequence of a previous conspiracy betwixt him and the pannel.

And here it is highly necessary that you should be greatly on your guard to distinguish accurately between the facts charged against the pannel and those charged against Allan Breck, which is the more necessary, as in the libel the facts are so intermixed that it is no easy matter to distinguish the one from the other. And though I must admit that the learned gentleman on the other side has been very candid in summing up the evidence, yet I could have wished he had been more careful to distinguish the proof, so far as it relates to the different pannels charged in the libel.

With regard to the first question concerning the guilt of Allan Breck, I shall not take up much of your time, for, though it is incumbent upon the prosecutor to prove that the murder was committed by the hands of Allan Breck, yet it is not absolutely necessary for the pannel to maintain the innocence of that person, as it is of no importance for the prosecutor to prove that the murder was committed by Allan Breck, unless he shall also prove that the pannel was accessory to it.

And, therefore, I shall very shortly state the objections against this part of the evidence, leaving it to your own consciences to determine how far the evidence brought by the prosecutor is sufficient.

And the first circumstance charged in the libel is—that, upon Monday, the 11th of May, Allan Breck having been informed that Glenure had gone that day to Lochaber, and was to return by the ferry of Ballachelish upon the Thursday after, he had laid aside his French clothes, which were remarkable, and had disguised himself in a black coat and trousers be-

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longing to the pannel with an intention to commit the **Mr. Brown** murder.

But, in the first place, it is not proved that, upon Monday, the 11th of May, Allan Breck had been particularly informed of Glenure's motions, for though it does, indeed, appear from the depositions of some of the witnesses referred to by the prosecutor that Allan Breck had heard of Glenure's having set out that day for Lochaber, yet it does not appear that he had got any information what road he was to take or at what time he was to return—none of the witnesses have said so—and in cases of this nature no fact ought to be presumed without proper evidence.

Secondly, though it is proved that Allan Breck did change his clothes upon the day libelled, yet it is not natural from thence to presume that this was done with an intention to commit the murder. It clearly appears from the depositions of the witnesses relative to this article that upon former occasions Allan Breck had been in use of laying aside his French clothes and putting on the dress of the country, and, in particular, it is proved by the depositions of the three Maccolls (who cannot be said to have been partial for the pannel) that he had on these very clothes belonging to the pannel when he went to Kannoeh in the month of April last; and, therefore, as it was no new thing but a common practice of Allan Breck's to lay aside his French clothes and put on the dress of the country, it is wrong in the prosecutor to lay hold of this circumstance, which is in itself innocent, and to wrest it into an argument against the pannel, especially as it appears from the depositions of the same three witnesses that Allan Breck wrought with them in the potato field the greatest part of that afternoon upon which he came to the pannel's house—which was a very natural reason for laying aside his French clothes as not being proper for that purpose.

The next circumstance charged against Allan Breck is that, for some days before the murder happened, he had hovered near to the ferry of Ballachelish, at which it was known Glenure was to pass; that during that period he had been twice at the house of Ballachelish, twice at the house of Glenco, and once at the house of Callart.

But, in the first place, it is not proved that Allan Breck knew that Glenure was to pass at the ferry of Ballachelish, and therefore it is ridiculous to talk of hovering or lying in wait when it was not known at what ferry Glenure was to pass.

Secondly, if Allan Breck had known that the defunct was to pass at Ballachelish, and had intended to lie in wait, he would have kept close at Ballachelish, and would not have gone either to Callart or Glenco, which are each of them at three miles distance, the first on the north side, and the other on the

## James Stewart.

Mr. Brown south side of the ferry. It is much more natural to presume that Allan Breck went to these places with an intention to visit his friends who lived there. And this is another instance where the prosecutor wrests a circumstance, which is in itself innocent, into an argument against the pannel.

The third and strongest circumstance against Allan Breck is that he absconded that very night upon which the murder happened, and left the country soon thereafter.

But this circumstance has been in like manner obviated by the proof brought on behalf of the pannel. It is clearly proved that in the year 1745 Breck was a soldier in the regiment commanded by Colonel Lee; that immediately after the battle of Preston\* he deserted to the rebels; that he remained with them till they were happily defeated at the battle of Culloden; and that since that time he had been in the French service; and, therefore, as Breck must have foreseen that, upon the murder of Glenure, a very strict search would be made, it was very natural for him, though innocent, to abscond and leave the country; and, accordingly, it appears from the proof that he gave this account of the matter to every person whom he had occasion to converse with upon that subject, and, therefore, as this circumstance, as well as all the rest, may naturally bear a construction favourable for the pannel, it is wrong in the prosecutor to put a bad construction upon an action that will naturally bear a good one.

The only other material circumstance from which the guilt of Allan Breck is inferred is that, before the murder, he had upon different occasions used threatening or resentful expressions against the defunct, but, as it seemed to be admitted by the learned gentleman on the other side, that expressions alone were not sufficient to infer the crime, I shall have occasion to consider more particularly the effect of such expressions under the second branch of my argument which properly relates to this pannel.

And whatever may be your opinion with regard to Allan Breck, I must humbly contend that there is no sort of evidence that the pannel now at the bar was in any previous conspiracy to commit this heinous murder, and, as far as the nature of the thing could admit of it, the pannel has proved the improbability of his being any way accessory to it.

In the first place, the character of the pannel goes far to protect him from any suspicion of this kind, though that part of the evidence was not taken down in writing, yet he has proved by witnesses, beyond all exception, and can appeal to your own consciences for the truth of it, that his character in private life was never stained by any dishonourable action. Is it possible, then, to believe that one of such a character

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\* Prestonpans.

## Addresses to Jury.

can at once plunge himself into the deepest guilt by committing the crime of assassination, which is of all others the most shocking to human nature? **Mr. Brown**

Secondly, the pannel's guilt is still the more improbable, as he could not possibly propose any benefit by it. He was a man of too good understanding not to see that Glenure's place as factor would soon be supplied; that the strictest search would be made for the authors of this enormous crime; and that his family, as being nearly connected with the forfeited person, would be first suspected. Is it possible that in such circumstances it could enter into the imagination of the pannel to commit a crime of so black a nature, when he could not only reap no benefit by it, but when it behoved necessarily to involve his own family in inevitable distress and ruin?

But, thirdly, there is another circumstance which renders it incredible that the pannel could have been in any previous conspiracy to commit this murder, for it is clearly proved that at that very time he was pursuing quite contrary measures; that he had provided himself, and was endeavouring to provide the other tenants in other possessions; and it is further proved, not only by verbal, but also by written evidence, which cannot lie, that his intention was to proceed in a legal way by taking a protest against Glenure upon the term day in case he should attempt to put his removing in execution. This is clearly proved by the pannel's letter to Charles Stewart, the notary, dated the 14th of May, being that very day on which Glenure was murdered, which letter ought to have the greater weight, as it is not produced by the pannel, but by the prosecutors, the same having been recovered by them out of Charles Stewart's hands.

In this letter (which greatly deserves your attention) the pannel writes to Charles Stewart that by the negligence of his servant he had been disappointed of the notary he first intended, "which he reckons a very great misfortune." And then the letter concludes in these words, "The next best thing I can think of, is that you be here this night, without fail, if you should hire a horse, as everything must go wrong without a person can act and that I can trust. This is such a tie upon all the men of our family that I'll press you no further, but do depend on seeing you once this night."

It is indeed true that this letter does not particularly mention that the pannel's intention was to take a Protest against Glenure; but, then, this is fully explained by the depositions of the witnesses, particularly by the oath of Charles Stewart, who deposes that he received a second letter from the pannel, of date the 14th of May, desiring him to attend the next day at the ejection; but he declined the same because he did not care to disoblige Glenure.

## James Stewart.

**Mr. Brown** This is further confirmed by the oath of John Beg Maccoll, the person who carried the letter, who deposes, "That, upon Thursday, the 14th of May last, the pannel gave a letter to the deponent to be delivered to Charles Stewart, notary public at Maryburgh, and told the deponent that the letter was to make or cause Charles Stewart come to the country of Appin to protest against Glenure in case he had not a sufficient warrant to remove the tenants of Ardshiel; that the pannel desires the deponent to make all possible despatch, and desire John Breck Maccombie at Kintalline and John More Maccoll, servant to the pannel, who was then at Kintalline, to ferry the deponent from Kintalline to Onich, being much shorter than the ferry of Ballachelish"; "that he set out from Aucharn about seven or eight o'clock in the morning, and made all the despatch he could to Fort-William where he arrived about twelve o'clock." Deposes, "That when he came to Fort-William he delivered the letter he got from the pannel to William Stewart, merchant in Maryburgh, who told him that Charles Stewart, the notary, was not at home, he having gone to the Braes of Lochaber in the morning, and told the deponent that he, the said William, had wrote to the pannel in the morning, and that there was a notary along with Glenure, who would serve the pannel as well as Glenure."

And it is further proved that the pannel had gone so far as to provide proper witnesses to be present at taking that Protest, as appears from the deposition of John Stewart, younger of Ballachelish, who deposes, "That, in the time of the spring circuit, in this place, in May last, he was summoned to be of the jury, but, at the earnest request of the pannel, that he, the deponent, should be present with a notary at the removing of the tenants from the estate of Ardshiel, he was going on that errand to the pannel's house, but returned to Appin upon hearing of the murder of Glenure committed that day."

And this observation, that the pannel had at this time no thoughts of the execrable murder of which he is now accused, is further confirmed from William Stewart's letter to the pannel, dated the same 14th of May, recovered by the prosecutors from out of the pannel's repositories, which concludes in the following words:—"I find Glenure has a mind to eject the tenants, but they ought to be deaf to it, and, at all risks, keep possession, as they are in good hands, as it must end in the Exchequer, so that I beg they keep possession. As there will be no troops, they ought to repel force by force, and take their hazard of the consequences, as it can be no more than violent profits, which are often modified in inferior Courts, besides the Exchequer, who will insist for so much, their chief design being to have a set of peaceable tenantry and a well-paid rent, so

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that the people ought to be assured they shall be supported as Mr. Brown far as law will, which, no doubt, must determine in their favours."

From the depositions of these witnesses, joined with the letters which have been read in your presence, it is incontestably proved that the plan concerted between the pannel and his friends went no further than to take a Protest against Glenure in case he should attempt to execute his warrant of ejection against the tenants; or, at furthest, that the tenants should continue in possession notwithstanding the warrant, and run the risk of violent profits. And it is of great importance in the present argument that these two letters are dated upon the morning of that very day on which the murder happened, a circumstance utterly inconsistent with the libel, which has no other footing to stand upon than this, that the pannel and Allan Breck had concerted the murder previous to the time when Allan Breck changed his clothes, which, as has been already observed, was four days before the murder.

Amidst such glaring improbabilities it would require the strongest evidence to convict the pannel. And this leads me to consider the several facts according to the order in which they are laid in the indictment.

And the first thing charged in the libel is that the pannel had conceived an unjust resentment against the defunct for three different reasons—first, because he had accepted the factory of the estate of Ardshiel; secondly, because he had removed him from the farm of Glenduror; and thirdly, because that in the month of April of '52 he had taken measures for removing certain other persons who were tenants and possessors of that estate.

The first is clearly disproved by letters and discharges under the hand of the deceased which have been read in your presence, and from which it appears that for several years after the date of the factory the deceased and the pannel were in perfect good terms, and that Glenure had such confidence in the pannel that he had employed him to uplift the rents from the other tenants.

The second ground of resentment is disproved by the oath of Alexander Stewart of Innernahyle, who deposes, "That the time when the pannel removed from Glenduror he told the deponent that he had had a meeting with Ballieveolan, and that there was a compromise betwixt them"; that he did not hear of any warning, but that he removed voluntarily.

And therefore the only ground of resentment which remains is that the defunct had taken measures for removing some of the other tenants of the estate as at the term of Whitsunday last, and though it may be true that the pannel has upon different occasions complained in strong terms of the hardship of

## James Stewart.

Mr. Brown removing these tenants, yet it is impossible to believe that so trifling a cause of resentment could have so strong an effect as to push on the pannel to the barbarous murder of which he is now accused, more especially when it is considered that he is in no ways related to any of these tenants, and that none of them are so much as of the same name.

The prosecutor has been pleased to lay great stress upon certain foolish expressions alleged to have been used by the pannel upon the subject of these removings.

It must occur to every man how extremely dangerous a proof of this kind is; there are very few witnesses who can repeat exactly the particulars of any conversation, and still fewer who can recollect these particulars at any distance of time. In such cases much may depend upon the tone of voice or gesture of the person who speaks, and the variation of a circumstance may alter the meaning of the whole expression.

Besides, there is an obvious disadvantage which this pannel labours under, and of which in the present case he has no small reason to complain, which is, that the particular expressions charged against him are not taken into the libel, neither are the circumstances of time and place mentioned, by which the pannel is deprived of the opportunity he ought to have had of bringing a contrary proof. If the particular expressions are known to the prosecutor, it was but just that they should have been taken into the libel; and, on the other hand, if they were not known, no such thing ought to have been at all mentioned.

And, indeed, with regard to some of the expressions, it is impossible to believe that the pannel used the words deposed to by the witnesses. Thus, in particular, the strongest expression is that deposed to by John Maccoll, the bouman, who deposes, "That about two years ago he heard the pannel say that he would spend a shot on Glenure though he went on his knees to the window to fire it." But as this expression is only deposed to by one witness who seems to have been abundantly forward in deposing against the pannel, so it is utterly incredible that at the time deposed to by this witness the pannel would have used this expression, as it is clearly proved by the depositions of the other witnesses that the deceased and the pannel were then in strict friendship together, and that at that time the deceased had such confidence in the pannel that he was then employing him as sub-factor upon this estate.

It would be very tedious, and is unnecessary, for me to make particular observations upon the other expressions deposed to by the several witnesses; at the same time, it is scarcely possible for me to recollect them, as I had no opportunity to know them till they were deposed to by the witnesses

## Addresses to Jury.

themselves. It is sufficient for me, in general, to observe that Mr. Brown some of them may bear an innocent meaning; that others of them appear to have been uttered when the pannel was in drink, and that none of them are so strong as that deposed to by the bouman, which has been already answered.

And though it should be admitted that the pannel had upon different occasions expressed himself foolishly in terms which implied resentment against the defunct, yet this by itself is by no means sufficient to prove that the pannel was accessory to the murder which afterwards happened.

And here I have only to appeal to your own hearts and ask how often you have heard resentful expressions thrown out in conversation where you were yourselves conscious that nothing was seriously intended. And though it may be true that such expressions may serve as a weight in the scale with other circumstances to convict the pannel, yet this holds only where these other circumstances cannot naturally admit of an innocent construction, but can never apply to the present case, where I am hopeful I shall be able to show that the other circumstances proved against the pannel have no shadow of relevancy in them.

At the same time it is a circumstance of some weight in the present case to take off the effect of these expressions that it is not pretended that the murder was committed by the pannel; on the contrary, the libel sets forth that the murder was committed by the hands of Allan Breck, and, however it may be true, that expressions importing resentment proved against the pannel may go far to presume guilt where none other is condescended on as the actor and perpetrator of the murder, yet that will no ways apply to the present case, where the very libel upon which the pannel is accused sets forth that the murder was not committed by the pannel, but by another.

The second fact charged in the libel is founded on a concert supposed to have been entered into betwixt the pannel and Allan Breck upon Monday, the 11th of May, in consequence of which concert, it is alleged, the murder happened. But as the prosecutor has brought no evidence of any such concert, or that Allan Breck and the pannel had any conference whatever upon the subject that day, so it is proved, as strong as the nature of the thing can admit of, by the prosecutor's own witnesses, that no such thing could possibly have been concerted that day. The sum of the evidence relative to this matter is that Allan Breck came to the pannel upon Monday, the 11th about mid-day, the pannel being then sitting in a field of potatoes in company with three of his servants, that after they had sit for a quarter of an hour together a message came from Mr. Campbell of Airds desiring the pannel to come to him at Keil, which is about two miles distant from the pannel's house;

## James Stewart.

Mr. Brown that, in consequence of this message, he immediately went to Keil, leaving Allan Breck with his servants; that he remained with Airds all that afternoon, and did not return to his own house till late at night, the family being then at supper, and several strangers along with them; that the pannel and Allan Breck had no conversation together in private that night; that they slept in separate places, and that the pannel had left his house next morning before Allan Breck got out of bed.

As this is a very material circumstance, in respect it is admitted upon all hands, that this was the only occasion the pannel and Allan Breck had of conversing together between Glenure's return from Edinburgh, upon Saturday, the 9th, and the murder, which happened upon the Thursday thereafter, I must beg leave to resume particularly the evidence on this head. John More Maccoll deposes, "That, upon Monday, the 11th of May last, he saw Allan Breck come to Aucharn dressed in his long cloaths, and came directly where the pannel, Allan (his son), John Beg Maccoll, and the deponent were covering potatoes; that when Allan came up they were resting themselves and sitting by one another; that Allan Breck sat with them, and all the conversation the deponent observed consisted in some questions about the welfare of the people of Glencrearan, and that he did not observe the pannel have any private conversation with the said Allan Breck, for that a very little time after Allan Breck's arrival the pannel had a message to meet Mr. Campbell of Airds at Keil: and that this happened after mid-day: that the pannel immediately upon receiving the above message went away in order to meet Airds, and that nobody went along with the pannel, Allan Breck having stayed with them."

John Beg Maccoll deposes, "That when Allan Breck came upon the 11th of May last to Aucharn the pannel was seeing the deponent, John More Maccoll, and Dougal Maccoll working at potatoes, and that Allan Stewart, the pannel's son, was likewise there; that when Allan Breck came they were all sitting together and that he seated himself by the pannel and had some conversation in English, which the deponent does not understand." Deposes, "That Charles Stewart, son to the pannel, and — Stewart, daughter to Fasnacoich, came to Aucharn from Fasnacoich a little after the said Allan Breck"; and further deposes, "That when Allan Breck came back—upon Monday, the 11th of May last—to the place where the pannel, deponent, and others were covering potatoes, as above, they had sit together but for about a quarter of an hour when the deponent went to work at potatoes at a great distance, and, before he went away, heard a message had come for his master to meet Airds at Keil, and heard his master

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Mr. Brown speak of going there, but when he went, or who went along with him, the deponent does not know, that the deponent continued working at the potatoes till the evening, and the pannel was not come home when he came from his work; that the pannel came home at bedtime accompanied with John More Macilichallen, who lay with the deponent that night."

Dougald Maccoll depones "That when the deponent came home from the wood upon Monday, the 11th of May last, the pannel was not at home, and the deponent was told he was gone to Keil to meet the laird of Airds; and that the deponent had gone to bed before he was gone to Keil to meet the laird of Airds; and that the deponent had gone to bed before the pannel came home that night; and that early upon Tuesday morning, when the deponent got up, he saw the pannel without, who told him that he was going to Appin's house; and that, to the deponent's knowledge, Allan Breck or the pannel's sons were not then up: that he saw the pannel go towards Lettershuna, where Appin lives. Deposes, that Allan Breck left Aucharn before the pannel returned from Lettershuna."

Katharine Maccoll deposes, "That the pannel went in the afternoon of the day (viz., 11th May) to Keils to meet Mr. Campbell of Airds, and that it was late at night before he came home, but that the family had not supped when the pannel came home, and that the pannel supped in company with Allan Breck Stewart, Fasnacloich's daughter, and Archibald Cameron, nephew to Fasnacloich, and the pannel's family."

Archibald Cameron deposes, "That upon Monday, the 11th of May last the deponent came from Fasnacloich's house to the pannel's house after mid-day: that some little time after he came there he saw Allan Breck Stewart: that the pannel was not at home when the deponent came first there, but came home before night fell: that the deponent, pannel, Allan Breck, and the family sat in one room and supped together; that he did not observe Allan Breck and the pannel speak in private that night: that the deponent and Allan Stewart, the pannel's son, lay in the one bed and Allan Breck and Charles Stewart, son to the pannel, in another bed in the same barn; that, to the best of his remembrance, they all went to bed much about one time and got up together next morning; that the deponent did not observe the pannel about the house next morning when he got up."

And the depositions of these witnesses are corroborated by Donald Campbell of Airds, who deposes, "That upon Monday, the 11th of May last the deponent sent to the pannel, desiring him to come to him at Keil, a farm belonging to the deponent, at about a mile's distance from the pannel's house; that the pannel accordingly came there to him that afternoon as soon

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Mr. Brown as he expected him; that the deponent's business with him was for his assistance in setting that farm; that the farm was accordingly set, and the pannel himself took part of it, and conveyed the deponent a part of his way home, and then they parted; that before parting he desired the pannel to go next morning to Appin's house; that the pannel accordingly did so, and the deponent had a letter from him from that place."

From what has been said, therefore, it appears that the prosecutor has not only not proved that upon the 11th of May there was anything concerted with regard to the murder betwixt the pannel and Allan Breck, but, on the contrary, it is proved, as strongly as the nature of the thing can admit of, that no such thing was or could be concerted betwixt them at that time; and if this is once established, it saps the foundation upon which the whole libel stands; and it is not pretended that the pannel and Allan Breck had ever any other opportunity of conversing together betwixt Glenure's return from Edinburgh and the time of the murder.

The third article charged in the indictment is that, in pursuance of the concert entered into upon the 11th of May, the pannel had furnished Allan Breck with a suit of his own clothes in order to serve as a disguise that he might be enabled to commit the crime with greater safety.

But, in the first place, it must occur to every man who hears me that this is a most improbable tale, for, if it had been intended that Allan Breck should be disguised at the time of committing the crime it is impossible it could be seriously intended that he should be disguised in a coat belonging to the pannel, for, however this might have served for a disguise to Allan Breck, it might serve equally for a point of evidence against the pannel, and therefore this improbable position can gain credit with no mortal unless it shall first be supposed that the pannel is not only the most wicked, but also the most foolish among men, which will not be easily credited by you who have been witnesses to the decent appearance he has made at this trial.

Secondly, as the story is improbable, so it is equally destitute of all foundation and truth, for it is not proved by any of the witnesses that the pannel furnished or gave the clothes to Allan Breck, and, though it is proved that he laid aside his French clothes and put on a suit of clothes belonging to the pannel or his son upon the Monday before the murder; yet it would be ridiculous to say that a party could be convicted as accessory to a murder because that the murderer had on his clothes at the time when the crime was committed.

And, lastly, upon this head, the circumstance of changing

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the clothes has been fully accounted for in the former part **Mr. Brown** of the argument; and as it has been clearly proved that Allan Breck has been formerly in use of wearing these very clothes the accident of having them on at the time when the murder was committed can have no weight against the pannel.

The fourth article charged in the libel is, that upon the morning of that day upon which the murder happened the pannel had sent John Beg Maccoll, a servant of his own, to Fort-William, in order to watch and give intelligence concerning the motions of the deceased; and great pains have been taken to prove this article.

But, unluckily for the prosecutor, this fact happens to be contradicted by every part of the evidence.\*

In the first place, it appears, from the oath of John Breck Maccombich, that it was known over the whole country that Glenure was to have been that evening at Kintalline, which lies on this side of the ferry at Bailachelish, and therefore, if the pannel's intention had been to watch Glenure's motions, it is natural to ask what good reason there could be to order his servant to cross the ferry and go on to Fort-William, when, by waiting at the ferry, he was sure to get intelligence of Glenure's motions?

Secondly, the fact is contradicted by the depositions of Daniel Kennedy and John Mackenzie, two witnesses also adduced for the prosecutor, who concurred in deposing that John Maccoll met Glenure and his company in their way southward, about three miles from Fort-William. If his errand had been to watch and give intelligence concerning Glenure's motions he would have certainly returned immediately and have given intelligence accordingly. But instead of this, it appears, from the depositions of these witnesses, compared with the oaths of William Stewart and his wife, that John Maccoll did not return, but went on to Fort-William, which is utterly inconsistent with what the prosecutor supposes.

And, lastly, this circumstance is flatly contradicted by the oath of John Beg Maccoll himself, who expressly deposes, "That when he went to Fort-William with the above letter to Charles Stewart, the notary, he had no orders from his master to inquire after the motions of Glenure, or to acquaint anybody thereof," but had been sent to Fort-William in order to bring a notary from thence to take a protest against Glenure upon the day following; and as that part of his evidence is confirmed by the pannel's letter to Charles Stewart,

\* The author of the "Supplement," who was present at the trial, states that at this stage Mr. Campbell of Southhall, one of the jurors, interrupted the prisoner's counsel, and cried, "Pray, Sir, cut it short; we have enough of it, and are quite tired, the trial having lasted long."

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**Mr. Brown** produced by the prosecutor, so the remarkable haste with which John Beg Maccol went to and returned from Fort-William, clearly shows that it was no sham errand, but that the pannel's real intention was to proceed in a legal way by taking a Protest against Glenure in case he should attempt to execute the ejection.

The next circumstance charged in the libel is, that when John Mackenzie informed the pannel of the murder, he appeared no ways concerned nor surprised, and that neither he nor his family went to look after the dead body. But as this circumstance is extremely trifling, so the first part of it is clearly disproved by the oath of John Mackenzie, Glenure's servant, who deposes, that immediately after the murder "he went to James Stewart's house in Duror, and James, seeing him weeping, asked what the matter was; and the deponent told him his master was killed; whereupon James Stewart asked him by whom and how it was done; to which he, the deponent, answered that he did not know by whom, and believed it to be a shot from a gun or pistol." And further deposes, "That when he saw the pannel at his house in Aucharn, as aforesaid, the pannel wrung his hands, expressed great concern at what had happened as what might bring innocent people to trouble, and prayed that innocent people might not be brought to trouble." And, to the same purpose, the said John Beg Maccoll deposes, "That when John Mackenzie informed the pannel of the murder, he said it was a dreadful accident, and he was afraid it might bring trouble on the country, and appeared sorry for what had happened."

It is, indeed, true that the same witness has deposed, that "neither the pannel nor any of his family went near the dead body," but as this is a circumstance of no manner of weight, so the witness has accounted for it in a very natural way, viz., that as the deceased and the pannel had not been on good terms together, the pannel did not choose to go to the place where the body lay; and more especially as he knew that some of those who were to meet Glenure had arms, and it was impossible to know what unreasonable lengths their resentment might carry them: at any rate, it shows how much the prosecutors are pinched in point of argument when they are obliged to found upon it as a circumstance against the pannel, that he did not go from his own house, which is about two miles distant from the place where the murder was committed, merely to assist at the funeral of a person to whom he was no way related.

The fifth article charged in the libel is that, upon the second day after the murder, the pannel had sent five guineas by the packman to Allan Breck in order to enable him to

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make his escape. As to which, gentlemen, I do admit that **Mr. Brown** if at this time the pannel had been in the knowledge that Allan Breck was the murderer of Glenure, his furnishing him with money in order to enable him to make his escape might have been considered as an offence deserving punishment. At the same time, however wrong this would have been, it might have admitted of an excuse from the connection and relation which the pannel had to Allan Breck. And it is now proved by the concurring testimonies of two witnesses that the pannel had been left his tutor, and therefore it is much doubted how far the pannel's sending money to Allan Breck, though he had known him to be the murderer, would have been punishable.

But, however the law might have stood upon that supposition, it will not apply to the present case. The pannel denies he knew anything of Breck's being the murderer, and as he was well acquainted with his particular circumstances, of which he has now brought full evidence by the concurring testimonies of many witnesses, that he had been first a deserter, next a rebel, and was then in the French service, I can see it was no ways criminal in the pannel to advance this trifling sum in order to enable him to make his escape. It was doing no more than what any good-natured man would have done to his friend in the like circumstances; and hard will be the case of the pannel if he shall be condemned merely for doing a good-natured deed which had nothing criminal in it, more especially as he had reason to believe the message which was sent him from Allan Breck, importing that he had no accession to the murder, but judged it prudent for him to leave the country in respect of his particular circumstances, explained as above.

And, indeed, His Majesty's Advocate does not seem to lay much stress upon this circumstance by itself, but then has attempted to rear up certain arguments tending to show that the sending of this money must have been in consequence of a previous concert with Breck. And, in the first place, it has been said that the pannel could not have known to have sent the money to Koalishnacoean if it had not been in consequence of such previous concert.

But, with submission, there is a very satisfying answer to this objection, viz., that upon the day after the murder the pannel had received a message from Allan Breck informing him where he was, and desiring him to send what money he could spare to enable him to make his escape. This is distinctly proved by the concurring testimonies of no less than four witnesses whose depositions, as they connect with one another, fall now to be attentively considered. Katharine Maciunes deposes, "That in the evening of the 14th of May last the deponent saw Allan Breck Stewart at a goat-house

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**Mr. Brown** in the moor of Ballachelish after Glenure was killed; that Allan Breck then asked her what was the occasion of the stir in the town. And that she told him Glenure was murdered; and further asked her who might have committed the murder; and that she told him she did not know; and that the said Allan further desired the deponent to tell Donald Stewart in Ballachelish to go to the pannel, and desired him to send the said Allan money; and that she delivered this message to Donald Stewart that same night; and that she told the said Donald Stewart where she saw Allan Breck."

And Donald Stewart the next witness, deposes, "That upon the evening of Thursday, the 14th of May last, about night-fall, Katharine Macinnes came to the deponent, and told him that one without wanted to speak with him; that this message came to him in Ballachelish's own house; that when he went out the said Katharine Macinnes told him that it was Allan Breck that wanted him, and that he was a little above the house in the 'e; that the deponent went up to the brae and met Allan Breck, who was then dressed in a great-coat and a dark short coat under it, with white metal buttons; the deponent told him of the murder, and said it could not be but that he, Allan Breck, was about it. To which Allan Breck answered that he had heard of the murder, but had no hand in it, to which the deponent replied he did not believe him; that the said Allan Breck Stewart told the deponent he was going immediately to leave the kingdom, was very scarce of money, and was going then for Koalisnacoan, and desired him, if possible, to send him money there; and the deponent then promised to acquaint James Stewart of the above method; that Allan Breck said he believed he would be suspected of the murder; and that upon that account, and as he was a deserter formerly from the army, it was necessary for him to leave the kingdom; that, after a conversation with the pannel about Sergeant More, he delivered the above message from Allan Breck to the pannel, and that the pannel did not say whether or not he was to send the money; and this conversation happened about ten o'clock in the forenoon of Friday, the 15th of May last; and that there was nobody present"; and further deposes, "That, upon the deponent's delivery of the above message from Allan Breck to the pannel, the pannel asked why Allan Breck himself did not come for the money if he wanted it, to which the deponent, to the best of his remembrance, replied, that Allan Breck told him he would be suspected for the murder, and was a deserter, to which the pannel answered that he hoped in God Allan Breck was not guilty of the murder; that during the above conversation with the pannel, Alexander Stewart, Duncan Maccombich, and several other possessors of Auchindarroch were in the adjoining

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field delving, but at such a distance that the deponent cannot think they could hear the above conversation." **Mr. Brown**

From the depositions of these two witnesses, which connect exactly together, it is distinctly proved in what manner the pannel came to the knowledge of the place where Allan Breck was; and their depositions are further supported by the deposition of John Stewart, younger of Ballachelish, who deposes, "That the day after the murder the deponent was at the pannel's house, who, after twelve o'clock of the day, told the deponent that he had a message that morning from Allan Breck by Donald Stewart to send him money; but does not remember whether the pannel told him the place where he was directed to send it; and the pannel told the deponent that he was resolved to send him money."

And also by the deposition of Alexander Stewart in Auchindarroch, who deposes, "That, to the best of his knowledge, he saw Donald Stewart in Ballachelish and the pannel together upon the marches between Aucharn and Auchindarroch in the morning of the 15th of May; and that he himself was at the time digging ground with the other tenants of the town."

The learned gentleman on the other side has been pleased to except against this part of the evidence, that the two material witnesses are both connected with the family of Ballachelish, that as to some of the facts they are single witnesses, and that they do not entirely agree as to the import of the message sent to Donald Stewart by Allan Breck.

I must acknowledge I am under no small difficulty to find out any foundation for the first part of the objection. It is neither pretended nor proved that Ballachelish is at all related to the pannel, and as it cannot be said that any valid objection could have been made against Ballachelish himself, if he had been produced as a witness for the pannel, far less does any objection lie against the son-in-law or servant of Ballachelish upon account of his being in the interest of the pannel, of which, however, no sort of evidence has been brought. And as to the second part of the objection, that there are not two witnesses concurring as to the whole of the facts relative to the message sent by Allan Breck to Donald Stewart, the learned gentleman would do well to observe how much of his own proof is founded upon single testimony, and then let him show cause why his packman and bouman, though single witnesses, should be credited, and the like indulgence should not be given to the pannel.

At the same time it must be observed that the two witnesses who have deposed with regard to this message are not single—They concur as to the material part, that Allan Breck had sent a message to the pannel desiring him to send him a present supply; and though the two witnesses differ with regard to

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Mr. Brown the precise words used by the maid in delivering Allan Breck's message to Donald Stewart, yet, as they agree in every material circumstance, no regard ought to be had to trifling variations; and it is believed the gentleman on the other side will admit that the objection would have been fully as strong (if not stronger) if the two witnesses had both used the same words.

And, lastly, as to the observation that the witnesses differ among themselves as to the precise hour when the packman arrived at Fort-William and demanded the money from William Stewart it is no ways surprising that at so great a distance of time witnesses should not be altogether exact as to hours and minutes. What appears most probable is that William Stewart and his wife have both mistaken the hour, as, from their oaths, neither of them seems to be positive with regard to that matter; and Stewart, the packman, seems to have been more attentive to this particular, since he not only swears as to the time when he received his message from the pannel, which he says was about twelve at noon, but also as to the time when he delivered it to William Stewart, which, as the packman says, was early in the evening; and as this agrees entirely with the account which Donald Stewart gives of the matter, when he says, that he delivered Allan Breck's message to the pannel about ten o'clock forenoon; so it is plain there could be no concert betwixt these two, not only as Donald Stewart is above all suspicion of that kind, but also as the packman has been kept under close confinement by the prosecutor, and had no opportunity of conversing with Donald Stewart from the time of the murder till he was produced as a witness; and I cannot help thinking that it would sound strangely to say that the prosecutor should be allowed to give credit to this packman where he swears for them, and, at the same time, to reject his testimony where it happens to make against them.

The prosecutor has been pleased to lay great stress upon the oath of John Breck Maccoll, bouman, and in particular upon that part of it where he says that Allan Breck had desired him to go into Fort-William with a letter to William Stewart in case some money did not come to him betwixt then and next morning; and this, it has been said, agreed exactly with the message sent by the pannel to William Stewart, desiring him to give credit in £5 sterling to John Breck Maccoll, bouman in Koalisnacooan, in case he came to demand it; and it is pretended that this is a clear proof of a private concert betwixt the pannel and Allan Breck settling the manner in which he was to be supplied with money.

But as the whole of this argument is founded upon the oath of the bouman deposing to a loquacious story, in which he is altogether unsupported, I am entitled in law to plead

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that his oath is not to be held as legal evidence against the Mr. Brown pannel, more especially as it appears, from what has been already said, that his evidence is disproved in one very material article, in which he deposes to a very strong expression, as applied by the pannel against Glenure, at a time when it is proved they were in perfect friendship together.

Secondly, the oath of the packman relative to this article is as little to be relied on, for though he has now deposed that the pannel had desired him to tell William Stewart, not only to send him £5, but also to give credit for the like sum to John Breck Maccoll in Koalishacoan, in case he came to demand it, yet it is remarkable that in the libel, which it must be presumed was taken from his own mouth, no mention is made of the £5 for which credit was to be given to the bouman; and therefore this must have been a new discovery made by the packman since printing the libel. And it is further remarkable that this part of the packman's evidence is contradicted by the oath of William Stewart, who expressly deposes, that at the time when the packman delivered his message from the pannel no mention was made of the name of Allan Breck, and therefore no argument can be drawn from anything either the packman or bouman have said upon this matter.

But, thirdly, supposing all the bouman has said to be true, viz., that Allan Breck had desired him to carry a letter to William Stewart, it will not follow that he and the pannel were under any previous concert relative to that matter, for, as Allan Breck was acquainted with William Stewart, and as nearly related to him as he was to the pannel, it was natural for him to have recourse to William Stewart to supply him in his necessity, and therefore his doing so will not prove that it was done upon any previous concert with the pannel. From the commission Allan Breck had given to Donald Stewart upon the Thursday evening he had reason to expect that the pannel would have sent him a supply with the first opportunity, and, as that had not happened, it was natural for him to apply to William Stewart, who was his acquaintance, and as nearly related to him as the pannel.

The learned gentleman has been pleased also to found upon the postscript subjoined to the pannel's letter of 14th of May to Charles Stewart, in which he desires, that William may send immediately £8 sterling to pay for four milk cows he had bought for his use at Ardshiel, from which it is inferred that before the murder the pannel was preparing money to give Allan Breck in order to enable him to make his escape. But as that letter and postscript do not mention the name of Allan Breck, nor to what purpose the money was intended to be applied, the observation does not deserve any

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Mr. Brown answer, though at the same time it clearly proves that the most innocent circumstances have been laid hold of and reared up into arguments against the pannel.

Thus it appears that no argument can be drawn from the circumstances of the pannel's sending money to Allan Breck, as it is not proved that the pannel then knew that the murder had been committed by him; and far less is it proved that there had been any previous concert betwixt them concerning the sending of that money before the murder was committed. And, indeed, gentlemen, it appears to me that the circumstances which attended the sending of this money, and in particular the difficulty there was in obtaining it, cannot fail to convince every unprejudiced person that this horrid murder had not been committed in consequence of any previous concert betwixt the pannel and Allan Breck, for if that had been the case it is impossible to believe that the money would not have been more early provided. It behoved to occur to both parties that money would be necessary to enable the murderer to make his escape, and, as it clearly appears, that neither one nor the other was in cash upon Monday, the 11th, when the time and manner of committing the murder is supposed to have been concerted, it is impossible that this important matter of providing the money would not have been instantly set about, or that it would have been delayed till the hour when the execrable act was to be committed.

The learned gentleman has been pleased also to lay weight upon another circumstance, viz., that some days after the murder two guns were found concealed near the pannel's house, one of them loaded and the other unloaded; and it has been insinuated as if the unloaded gun was that with which Allan Breck committed the murder. But this circumstance is really so trifling that it scarcely deserves a serious answer. It is well known that the part of the country where the pannel lives fell under the Disarming Act, and therefore it was no wise surprising that the guns were found hid, and that orders were given to hide them at a time when it was foreseen that a strict search was to be made by the military; and though one of the guns was unloaded, it is a strange flight of imagination from thence to infer without evidence that this was the gun with which the murder was committed.

Besides, it appears from the oaths of John Beg and Dougal Maccolls, both witnesses produced for the prosecutor, that the little gun which was found unloaded was in such miserably bad order at the time when the murder happened that it is impossible it could have entered into the head of any mortal to use it for the purpose supposed by the prosecutor. Dougal Maccoll deposes "That he, the deponent, has no skill about

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guns, but heard Allan Breck and Allan Stewart, the pannel's Mr. Brown son, complain more than once that the guns were in bad order."

John Beg Maccoll deposes, "That neither of the guns were in good order, and that the large or loaded gun was in use when going to be snapped to stand at half-cock, and that the little gun was in use to snap or misfire; that the little gun had an old, worn flint in it, and that he observed this flint in the said gun when he was in use to see it stand at the end of the girmel, as above, but did not observe whether it had a flint or not when he took it from under the girmel; that he knows no fault the lock of the little gun had but its being in use to misfire, and that the lock was on the said gun when he hid it on the Friday evening": "that Allan Breck carried it out one morning, and told that it misgave with him thrice at a blackcock and shot with it the fourth time without killing the cock."

And in like manner Captain David Chapeau and Patrick Campbell concur in deposing that this little gun at the time when it was found was in such bad order that, for want of a screw-nail, the lock was tied to the stock by a string, and, therefore, upon the whole, I leave it to you to judge how far it is possible that a gun in such order would have been used for the purpose supposed by the prosecutor or that it would have been carried back so quickly, as it must have been, to the pannel's house at a time when every person was on the watch inquiring about the murder.

And it is of no importance that neither John Beg nor Dougal Maccoll saw his gun at the time when the other arms were hid upon the Thursday evening, for as neither of these two witnesses say that they looked for it, so they have both deposed, that Allan Stewart, the pannel's son, had then told them that he had hid it below the girmel: and as they accordingly found it so hid upon the day following, it removes all ground of suspicion which might otherwise arise from the circumstance that this gun was not hid with the rest of the arms on the Thursday evening. At the same time, the pannel must beg leave to say that it would require some explanation how it has happened that the lock of this little gun comes to be now missing when such care has been taken to preserve every other particular which could possibly furnish any handle for an argument against the pannel. A good deal of weight has been also laid upon another circumstance of the like nature with the former, viz., that, upon the day after the murder, Allan Breck's clothes were hid in consequence of an order by the pannel's wife; but as it is not easy to figure how an order given by the pannel's wife should have any effect against the pannel, so it is humbly thought that this circumstance may be easily accounted for. It was foreseen that, as

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Mr. Brown Allan Breck was about to leave the country, he would be immediately suspected as guilty of the murder, and as there was great reason to believe that a search would be forthwith made in every place where Breck was in use to visit, it was natural for the pannel's wife to put his clothes out of the way that they might not be the occasion of suspicion against the pannel or his family.

His Majesty's Advocate was pleased to found upon the oath of John Maccoll, bouman, who deposes that Allan Breck had said to him that the apprehending of the pannel and his son would not signify much, but expressed some concern lest Allan Stewart, son of the pannel, might be betrayed by his own tongue. But, as the bouman is only here deposing to an expression of Allan Breck's when he was endeavouring to free himself from suspicion, as the bouman is at best only a single witness, and as the expression supposed to have been used by Allan Breck does not imply that either the pannel or his son had been guilty of the murder, this circumstance, supposing it true, ought not to be regarded.

And here I cannot omit putting you in mind of one circumstance deposed by Alexander Stewart, the packman, which shows pretty clearly that no regard ought to be had to the oath of the bouman; and, besides, it is single, and not supported by other evidence. The packman deposes, "That the bouman had desired him to conceal his carrying the clothes and money to Koalishacoan; told him that he could not prove it against him: and that he could safely depose he did not deliver the clothes to him, since he only pointed out where they were." I leave it to you, gentlemen, to judge what credit can be given to a witness whose principles were such as to suppose that perjury might be evited by so poor an evasion.

It has been also said, that the pannel's wife, his two sons, and his daughter have in some things contradicted each other in the declarations made by them severally at Fort-William.

The pannel cannot help thinking it hard that extrajudicial declarations made by his own family should have been received as evidence against him, more especially as it has been hitherto held to be an established principle in our law, not only that extrajudicial declarations by third parties cannot be taken or received as evidence against any pannel, but also that those who stand in the relation of wife or children to the pannel cannot be received as witnesses against him.

However, as these declarations have been allowed to be read in Court, though objected to by the counsel for the pannel, he must acquiesce in the judgment given; but, at the same time, I am fully persuaded that, upon perusing these declarations, the jury will be of opinion that the differences (if there are any) are so trifling that they can have no weight against

## Addresses to Jury.

the pannel, and, though it should be supposed that the wife or Mr. Brown daughter of the pannel from a mistaken notion of duty to a parent and husband, who had been always indulgent to them, have endeavoured to conceal that Allan Breck went from the pannel's house on Tuesday morning, dressed in a coat belonging to the pannel; yet, as it has been demonstrated, it is hoped to your conviction, that there is no sort of relevancy in this circumstance—it can have no other effect but to show how extremely improper it is that so near relations should be examined against any man upon trial, but can never be used as an argument against the pannel. On the contrary, gentlemen. I cannot help thinking that these declarations afford a very strong argument for the pannel, for as no less than sixteen different declarations appear to have been taken from the pannel himself, his wife, and children (one of his sons having been examined no less than five different times), it is really surprising that so great a number of declarations, signed by different parties, all relative to the same matter should agree so exactly together, and, as all the attention of the prosecutor has not been able to draw from these declarations anything which can fix the most distant suspicion of guilt against the pannel, it tends strongly to fortify the legal presumption of his innocence.

As to the letter wrote by the pannel to John Macfarlane, referred to in the libel, I am still at a loss to discover what argument can be drawn from it, for as that letter (which was wrote soon after the murder, and before any advertisement had been published by the friends of the deceased for apprehending Allan Breck) contains an exact description of Breck's person and dress, and also of the place where he was most likely to be found, it rather proves for, than against, the pannel; and it was but natural at this period for the pannel to express an anxiety to have Allan Breck apprehended, as it appears from the proof that before this time it was the common report of the country that the murder had been committed by Allan Breck, and therefore it behoved, naturally, to occur to the pannel that the easiest and shortest way to obtain his own liberty was to find out and secure the person by whom the murder was supposed to have been committed.

The learned gentleman on the other side still insists that it is not proved that any other person besides the pannel had any quarrel or resentment against the deceased, and it has been further said, that, if Allan Breck was the actor in the murder, he was only revenging the quarrel of the pannel.

But the weight of this observation is fully taken off by the evidence produced for the pannel. It is clearly proved by the depositions of Angus Macdonald, Duncan Campbell, Robert Stewart, and Charles Stewart, that Allan Breck had sworn

## James Stewart.

**Mr. Brown** revenge against Glenure upon a belief that he had given information against him as a deserter, and though Colonel Crawford has deposed, that the deceased had never given him any such information, yet this does not at all vary the argument, as it is undeniably proved that Allan Breck still believed that such information had been given, and upon that account bore deep resentment against the deceased; and therefore, supposing that the murder had been committed by Allan Breck (which is not admitted), it will not follow that it was done with a view to resent any quarrel the pannel might have had with the deceased, since it might have been done with a wicked purpose of avenging his own private quarrel, and, at the same time, it is very proper to be here observed that the deceased had executed a warning and obtained decreet of removing against a great many of the tenants of Ardahiel and Lochiel; and if it is true that in that part of the country a step of this sort is considered as a cause of mortal hatred, it was, at least, as much so to the tenants removed as it could possibly be to the pannel, and therefore it is wrong in the prosecutor to say that there was no other person who had any cause of resentment against the deceased but only the pannel, whereas it is plain that every one of the tenants who had been decerned to remove from their respective possessions had at least as strong a cause of resentment against the deceased as that which is libelled against the pannel: and, besides, I might also observe that it is proved by the depositions of the two last witnesses produced for the pannel that one Sergeant More Cameron (who in that part of the country is known to be of a most abandoned character) had threatened to shoot Glenure, or to be up sides with him, in case he should happen to meet him.

Upon the whole, gentlemen, I flatter myself I have shown to your conviction that all and each of the circumstances proved against the pannel are such that they can easily bear a good construction, and might have happened naturally though he had been innocent of the crime laid to his charge, and when to this it is added that the character of the pannel in private life renders it highly improbable that he could have been accessory to so vile a crime, that he could not possibly reap any benefit by it, and that it is proved by incontestable evidence that at the very time when the murder was committed he was anxiously pursuing another measure which was utterly inconsistent with the supposition of his being in any way accessory to the murder, I persuade myself that you will be careful to divest yourselves of any impressions you may have received without doors, that you will judge upon the evidence impartially as it lies before you, and that, upon the whole, you will find the pannel not guilty of the crime laid to his charge.

## Addresses to Jury.

At the same time, in case you shall have any difficulty in Mr. Brown finding the pannel not guilty, or, in case you shall be of opinion that there is a shadow of relevancy in any of the circumstances proved against the pannel, it is your duty to return a special verdict upon the facts proved for and against the pannel, and in that case you ought to be particularly careful to omit no circumstances which may have any tendency to exculpate the pannel.

At the conclusion of Mr. Brown's speech the Court adjourned after pronouncing the following interlocutor:—

"Sunday, 24th September, 1752, betwixt seven and eight Interlocutor o'clock in the morning.

"The Lords ordain the assize instantly to inclose in this place, and to return their verdict upon Monday next, the 25th current, at eleven o'clock before noon, and adjourn the Court and hail diets thereof till that time, and ordain the hail fifteen assizers there to attend, and the pannel to be carried back to prison."

## James Stewart.

Proceedings on Fifth Day, Monday, 25th  
September, 1752.

CURIA ITINERIS JUSTICIARII S. D. N. REGIS,  
Tenta apud burgum de Inveraray, vicesimo quinto  
die mensis Septembris, anno Domini millesimo  
septingentesimo quinquagesimo secundo, N.S.,  
per nobilem et pæpotentem Principem  
ARCHIBALDUM ducem de Argyll, Dominum  
Justiciarium Generalem, et PATRICIUM GRANT  
de Elchies, armigerum, et Dominum JACOBUM  
FERGUSON de Kilkerran, Dominos Commission-  
arios Justiciarii dicti. S. D. N. Regis.

Curia Legitime Affirmata.

INTRAT. The above James Stewart, pannel.

The persons who passed upon the assize of the said James Stewart returned the following verdict:—

**The Verdict** "At Inveraray, the 24th day of September, 1752 years new stilo, the above assize, having inclosed, did make choice of the said Colin Campbell of Skipnish to be their Chancellor, and James Campbell, late bailie of Inveraray, to be their Clerk: and, having considered the criminal letters pursued at the instance of William Grant of Prestongrange, Esq., His Majesty's Advocate for His Majesty's interest, and also at the instance of Janet Mackay, daughter to the honourable Hugh Mackay of Bighouse, Esq., and relict of the deceased Colin Campbell of Glenure, for herself and on behalf of Elizabeth and Lucy Campbells, her infant children, with concurrence of His Majesty's Advocate, for His Majesty's interest, against James Stewart, pannel: the Lord Justice-General and Lords Commissioners of Justiciary, their interlocutor thereupon, with the depositions of the witnesses adduced for proving thereof, and depositions of the witnesses adduced for the pannel, together with the writings and other particulars contained in the inventory subjoined to the libel and the writings produced for the pannel; find unanimously the pannel, James Stewart, guilty, art and part, of the murder of Colin Campbell of Glenure. In witness whereof our said Chancellor and Clerk have subscribed these presents in our names, and in our presence, place, and date above written.

"COLIN CAMPBELL, Chancellor.

"JA. CAMPBELL, Clerk."

After reading this verdict the Court proceeded to give judgment, which, being written down in the book and signed by the whole judges, was read by the clerk, and, in the usual

## Argyll's Address to the Prisoner.

manner repeated, pronounced by the dempster to the pannel as follows:—

"The Lord Justice-General and Lords Commissioners of the Death Sentence Justiciary having considered the verdict of assize of date the 24th current, according to the present stile, returned this day against James Stewart, pannel, whereby he is found guilty, art and part, of the murder of Colin Campbell of Glenure; they in respect thereof by the mouth of John Mackenzie, dempster of Court, decern and adjudge the said James Stewart to be carried back to the prison of Inveraray, and therein to remain till the fifth day of October next, according to the present stile, and then to be delivered over by the magistrates of Inveraray and keeper of the said prison to the Sheriff-depute of Argyllshire or his substitutes, and to be by them transported to the shire of Inverness, and delivered over to the Sheriff-depute of Inverness, or his substitutes, and to be by them transported to Fort-William, and delivered over to the governor, deputy-governor, or commander-in-chief for the time of the said garrison to be by them committed to prison in the said fort therein to remain till the 7th day of November next, according to the present stile; and then again to be delivered over to the Sheriff-depute of Inverness-shire or his substitutes, and to be by them transported over the ferry of Ballachelish, and delivered over to the Sheriff-depute of Argyllshire or his substitutes, to be by them carried to a gibbet to be erected by the said Sheriff on a conspicuous eminence upon the south side of and near to the said ferry; and decern and adjudge the said James Stewart upon Wednesday, the 8th day of November next, according to the present stile, betwixt the hours of twelve at noon and two afternoon, to be hanged by the neck upon the said gibbet by the hands of an executioner until he be dead; and thereafter to be hung in chains upon the said gibbet; and ordain all his moveable goods and gear to be escheat and inbrought to His Majesty's use, which is pronounced for doom.

" ARGYLL.

" P. GRANT.

" JA. FERGUSON."

After which the Lord Justice-General addressed the prisoner in these terms:—\*

Lord Justice-General

James Stewart, you have had a very long and most impartial trial; you have been prosecuted with all the moderation consistent with the crime you stood accused of, and your

\* *Note to the original record.*—"When the sentence was pronounced against James Stewart at Inveraray, the gentlemen who attended the trial the preceding days having been all tired with it, did not take notes the last day. But, as far as they can recollect, the substance of what the Lord Justice-General then said to the pannel was as is above set down."

## James Stewart.

Lord Justice-  
General

counsel have defended you with great ability and with decency. The jury have unanimously found you guilty of having been accessory to this horrid murder, which, upon due consideration of all circumstances, seems to be according to the evidence.

My brethren, in delivering their opinions have endeavoured to make you sensible how heinous the crime is of which you stand convicted, a base and most infamous murder and assassination in defiance of the laws of God and man and the common principles of humanity. I must add one circumstance more which aggravates your guilt, and that is, your ingratitude to that gentleman who by your means is now no more. You had, by your artifices, got into his confidence before he had time to be well informed of the circumstances of the estate of which he was appointed steward. This confidence you abused so much as to raise sums of money from the tenants for your own purposes; but when, in obedience to the orders of his superiors, he was removing you and others from the farms they did possess, then, according to the malice always prevailing in uncivilised parts of the Highlands, your inveterate hatred began, so that it may be said of you that you first eat his bread and then shed his blood.

To trace your crime from its true original source I will use the words of our statute-book—Those barbarous cruelties and lawless oppressions practised in the Highlands during several centuries, against which the laws made so long ago as the year 1587, and enforced in 1690, were so severe that the clans were bound to deliver hostages as securities for the peace, who were even to be put to death if no redress was made. To this I must add that obstinate and almost incurable disaffection and aversion to the Government in several Highland clans, and, in particular, your own, ever since the happy Revolution and the establishment of the crown in the Protestant line.

In the year 1715 there broke out a most unnatural and unprovoked rebellion soon after the accession of His late Majesty to the throne, in which the part your clan acted is well known, so many being here present that were witnesses of their composing part of the rebel army which besieged this town. This I myself have reason to know. A Royal indemnity soon followed after those treasons then committed, but, in the year 1719 your clan, unmindful of their lives and fortunes having been granted them only two years before, did again rise in rebellion, and assisted a foreign enemy in an invasion; in this you are said to have acted a part, though at that time very young.

In the year 1745 the restless spirits of the disaffected Highlanders again prompted them to raise a third rebellion, in which you and your clan formed a regiment in that impious

## Statement after Sentence.

service, and in which you persevered to the last. The Divine Providence at first permitted you to obtain some advantages, which has possibly been to give you time to repent of your crimes. But who can dive into the secrets of the Almighty? At last Heaven raised up a great Prince the son of our gracious King, who, with courage equal to that of his ancestors, and with conduct superior to his years, did, at one blow, put an end to all your wicked attempts.

Lord Justice-General

If you had been successful in that rebellion you had been now triumphant with your confederates trampling upon the laws of your country, the liberties of your fellow-subjects, and on the Protestant religion. You might have been giving the law where you now have received the judgment of it; and we, who are this day your judges, might have been tried before one of your mock Courts of judicature, and then you might have been satiated with the blood of any name or clan to which you had an aversion.

I have thought it my duty to put you in mind of these facts, only to mark out those wicked paths which have led you to destruction; and though you don't now stand accused as a rebel nor am I permitted to call you a traitor, because His Majesty's undeserved mercy to you did several years ago restore you to the state of an innocent man, yet I may say, with great force of truth, that this murder has been visibly the effect and consequence of the late rebellion.

You may yet during the short time you have to live, be of great service to your friends and neighbours by warning them against those principles and practices which have brought you to this untimely end; and may the Lord have mercy upon your soul.

Immediately after sentence of death had been passed and the Lord Justice-Clerk had ended his speech, JAMES STEWART said—

My Lords, I tamely submit to my hard sentence. I forgive the jury and the witnesses who have sworn several things falsely against me, and I declare, before the great God and this auditory, that I had no previous knowledge of the murder of Colin Campbell of Glenure, and am as innocent of it as a child unborn. I am not afraid to die, but what grieves me is my character, that after ages should think me capable of such a horrid and barbarous murder.

The Accused

The prisoner was then conducted to his cell.

## James Stewart.

### The Speech of James Stewart from the Scaffold.

MY DEAR COUNTRYMEN,—

The several motives that induced me to offer the world a narrative of my uncommon misfortunes are as follows:—

First of all, my innocence makes my sufferings easy, and alleviates all afflictions, be they never so severe in the eyes of man.

Secondly, that my silence upon this occasion might not be constructed to my prejudice by my prosecutors, as my silence at the bar, when I was hearing some of the evidences aver untruths against me, was said to have proceeded from conviction of guilt, and that if I should challenge them they would say more than they did.

Thirdly, in order to let the world know the hardships put upon me since my confinement, contrary to the known laws of this nation, which effectually disabled me from making many defences I otherwise might produce.

Fourthly, that it came to my ears my prosecutors had spread a false report that I made a confession of that crime when in Inveraray gaol after receiving my hard sentence.

Fifthly, that I might offer my public advice to my friends and relations upon this melancholy occasion.

These are the chief reasons for the following narration of facts, which I hope to make appear so clear as will convince the unprejudiced part of mankind how much I am injured that I die, as I endeavoured to live, an honest man.

As to the first article, of my being art and necessary to Glenure's murder, I positively deny, directly or indirectly, nor do I know who was the actor, further than my suspicion of Allan Breck Stewart, founded upon circumstances that have cast up since the murder happened; and I do declare that it was not from any conviction of his being guilty of that crime I sent him money to carry him off the country, but out of charity and friendship I had for him, not only as a relation, but likewise as a pupil left to my charge by his father, and as a person who kept close by my brother in his greatest distress when lurking, before he got off the country; and that I knew he was a deserter, so durst not stand a precognition. I also declare it was without my knowledge he carried any part of my cloaths with him from my house upon the Tuesday before the murder; nor did I know where he was or where he had gone to from that time, until Donald Stewart, nephew to Ballachelish, came to me Friday after that unlucky action happened, and told Allan Breck was at Koalisnacooan, and begged I might send him some money to help him off the country, as he durst not appear publicly for fear of being secured for the above reason of his being a deserter; and the said Donald Stewart told me that Allan Breck assured him he had no hand in the murder.

I likewise declare, though it is set forth in my indictment that Allan Breck frequented my house and company most of any place since he came to the country in March last, that I did not see him but thrice from his coming till he went away from the country. The first time was two nights before I went to Edinburgh in the

## Speech from the Scaffold.

beginning of April last. The next, or second, time was about eight days after my return from Edinburgh, which was about the last days of April, as I best remember, when he stayed but one night that I was at home. The third and last time was upon the Monday before Glenure's murder, that he came to my house about one of the clock afternoon, and stayed that night; and the next morning I went from home, which was Tuesday, before he was out of bed, nor did I see him that day or since. Nor can I remember Glenure's name was spoke of in his company either of the two last times, unless it was he that told me Glenure was gone for Lochaber upon the Monday, as to which I cannot be positive; but I am very sure there was no word of destroying him in any way spoke of. The first time he must have heard me talk of Glenure, as I told him I was going to give in a Memorial for the tenants to the Barons of Exchequer.

It is also set forth in my indictment that it was of my own accord, and not at the desire of the tenants, I went to make application for them in law. I do declare it was their desire that all lawful ways should be taken to keep them in possession, and do assure myself that nothing obliged them to refuse that, but fear and ignorance, believing that if they should own it they would be made prisoners, as all the poor people were put in such a terror by a military force kept in different parts of the country, that they—I mean the poor country people—would say whatever they thought pleased my prosecutors best.

I declare what John Dow Breck Maccoll, bouman in Koaliansa-coan, deponed in regard to my coming to Glenure's window was false, and that at the time he condescended on I should have said so, being two years ago, I was in very good friendship with Glenure, which his letters to me about that time testify.

As to the story John More Maccoll, Dougal Maccoll, and John Beg Maccoll, my servants, told they heard me say in my brew-house, that if Glenure did live five years he would be laird of Appin, and that I saw people in Appin that would not allow Glenure to go on at such a rate, this I do not remember. But this I can safely say, that John Beg Maccoll came in to the gaol at Inveraray to see me next day after my sentence was passed, crying and tearing as if he was half-mad, and told me that the night Dougal Maccoll and he himself were on their way to Inveraray, at the strath of Appin, Ewen Roy Maccoll, portioner of Glassdrim, and the said John More Maccoll, brought two bottles of aqua vitæ into the barn where they were confined, and wrought upon them to make up that story, and made them believe that it could not hurt me, and would gain them friendship at Barcaldine's hand. I truly believe, though, it were truth that it could not hurt any other person, though anything was proof enough against a man so ill looked upon as I seemed to be.

Alexander Stewart, packman, deponed several falsehoods, particularly in regard of the five guineas he said I desired him to tell William Stewart, merchant in Maryburgh, to give John Dow Breck credit in for Allan Breck's use, and his saying I desired him to get only four pounds sterling from William Stewart for paying milk cows bought for his use at Ardsheall, whereas he was only desired to get eight pounds sterling for paying these cows, as they in truth were bought for William Stewart's use.

I declare the reason why I did not challenge them at the bar was that my lawyers desired me, though I heard a witness swear falsely, not to speak, otherwise I should be worse looked upon; so that I hope the unbiassed will believe that my silence did not proceed from fear, as alleged by my enemies, but in obedience to

## James Stewart.

the advice given me by my counsel, which I was determined to follow whatever should happen.

That there were plenty of bribes or rewards offered to several I am assured. Particularly Donald Ranken, herd to Ballachelish, a young boy, was offered eighteen hundred merks, which are his own words, but he was kept close prisoner at Inveraray, so that none of my friends had access to put any questions to him. John Maccombich, late miller in the mill of Ardsheall, was offered his former possession of the mill for telling anything would answer their turn. Duncan Maccombich and Duncan Maccoll, both in Lagnaha were offered as much meal as they pleased to call for at Fort-William if they would make any discoveries. I now leave the world to judge what chance a man had for his life when such bribes were offered to poor, ignorant country people, or what assurance can any man have but such bribes prevailed with some of those who did make oath.

As to the uncommon hardships put upon me under my confinement they were many, such as being taken into custody without any written warrant upon the 16th day of May last; carried through night to Fort-William, where I was kept close prisoner; not allowed to see any of my friends, or any that could give me counsel, until about the 20th of June there came a letter from Mr. William Wilson, directed to my wife, with the Act of Parliament discharging close imprisonment longer than eight days, which, when shown to Colonel Crawford, who then commanded the fort and troops, he allowed my wife and some others to see me, but would not allow such as I thought could be of most use to me to come near me, particularly Mr. Stewart, younger of Ballachelish, who came with some law advices to me, would not be admitted; nor would Charles Stewart, writer, or William Stewart, merchant, Maryburgh, get any admittance. In short, any who could be supposed to be of any service to me in making my defences were not permitted access to me. I do not impute this usage to Colonel Crawford, for whom I retain a very great regard, and who did not want humanity, had he not got a very bad impression of me from my prejudiced prosecutors. And when Colonel Crawford left Fort-William some time in the beginning of July, the new governor would allow none to come near me, turned my wife twice from the fort, and discharged her to stay in Maryburgh. And in that close situation was I kept, until my indictment came to hand about the latter end of August; so had no way to make up my defences, nor durst any of my friends in the country offer to do for me, otherwise they would be laid up prisoners; and those who I expected had most to say for my exculpation were taken prisoners, and kept close till my trial, so had not access to put any questions to them, by which they were not ready to make their answers when called at the bar. I am far from charging the governor with this hard usage, who appears to be a good-natured man, but had his orders so to use me.

When my trial came on I found it was not only Glenure's murder I had to answer for, of which I thank God my conscience could easily clear me, but the sins and follies of my forefathers were charged against me, such as the Rebellion in 1715, in 1719, and 1745, so could not be allowed the character of an honest man; notwithstanding that, I firmly believe there was none present but who was either himself, or came of people that were, concerned in rebellion some time or other. God forbid that they should be all called villains upon that account, as the greatest sinner, upon his repenting, may turn saint.

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The scene of the execution of James Stewart.  
(A knoll beside Ballachulish Hotel.)



## Speech from the Scaffold.

I was a schoolboy in the year 1715, and was but little more in the year 1719; and if I had the misfortune to be concerned in the year 1745, I was indemnified, and have done nothing since to incur the Government's displeasure that I am conscious of.

Another surprising charge against a man in a Christian country came in against me, which was that I was a common parent to fatherless children, and took care of widows in the country, which gained me great influence over the people, by which they were much led by me—or some words to that purpose. I hope soon to appear before a Judge who will reward charity and benevolence in a different way; and I only regret how little service was in my power to do, not only to the fatherless and widows, but to all mankind in general, as I thank God I would make all the race of Adam happy if I could.

Another charge, and a heavy one, was that when sub-factor to Glenure I exacted more rents of the tenants than were paid to the Exchequer, and which superplus rents I wrongously applied, either to my own use or to the behoof of my brother Ardsheall's children.

I own I did get some acknowledgments from some of the tenants, with the knowledge and consent of the factor, Glenure; and do declare that I was as assiduous as in my power in acting for the benefit of said children, and that I did account to their behoof for all I could make of these lands over and above the rent paid to the factor, and thought it no crime so to do, but, to the contrary, thought it my duty, to which I was bound by the ties, not only of nature, but also of gratitude, being the distressed offspring of a very affectionate, loving brother, to whom I was under many obligations, and whose misfortunes, I am well assured, proceeded from a conviction of his doing his duty, which may be construed by some to be owing to the prejudice of his education.

I do declare that I made no confession of the crime alleged against me at Inveraray or elsewhere, and that I had it not to make. Nor can I remember that any there asked me the question, excepting Mr. Alexander Campbell, minister, who, I am persuaded, could not be capable of being author of that false calumny, which must have been raised by some malicious persons. May God forgive them. It is very true that I told Mr. Campbell I had no personal love for Glenure, and that I was sorry how few in his neighbourhood had. But I hope no man would construct that as if I had an intention to murder him.

I also told him that I had the charity to believe that the bulk of the jury thought I had some foreknowledge of the murder. Yet I still think, and not without some reason, that they gave themselves too little time to consider the proofs of either side, but gave in their verdict upon the prepossessed notion of guilt. What must convince all well-thinking people of their being so prepossessed is their stopping one of my lawyers twice in his speech to them after the witnesses were examined. Mr. Campbell of Southhall, if I noticed right, was the first that interrupted my lawyer. There was some other who also spoke, and who I did not know. I am told this is not often practised in Christian countries, but there are many ways taken upon some emergencies for answering a turn, and it appears I must have been made a sacrifice, whoever was guilty.

As to what Alexander Campbell in Taynaluib deponed, that I did not know what I should help any of his name to if it was not to the gallows, I do remember part of what passed, though my memory is not quite so good as Mr. Campbell's or Colin Mac-

## James Stewart.

laren's; but this far I can safely say, upon the word of a Christian going into eternity, that I had no other intention in what I said than a joke; and if I had any grudge at himself for being Campbell I was under no necessity to go into his house, as there was another public-house within a gunshot of his door.

As to what Ewan Murray and Colin Maclaren deponed in regard to my telling them that I had given a challenge to Glenure, I own I was wrong in telling them that story, as it was a thing they had no concern in.

And as to what Colin Maclaren deponed I should have said upon the road after parting with Ewan Murray, I solemnly declare I do not remember one word that passed, being much the worse of liquor, as he himself owned upon oath.

I do declare that I frankly forgive all these evidences and jury as freely as I want forgiveness of my sins, and do from my heart pray that God may pardon them and bring them to a timeous repentance, and that they may not be charged with my innocent blood, as I never intended any of them the least harm.

My dearest friends and relations, I earnestly recommend and entreat you, for God's sake, that you bear no grudge, hatred, or malice to those people, both evidence and jury, who have been the means of this, my fatal end. Rather pity them, and pray for them, as they have my blood to answer for. And though you hear my prosecutors load my character with the greatest calumny, bear it patiently, and satisfy yourselves with your own conviction of my innocence. And may this my hard fate put an end to all discords among you, and may you all be united by brotherly love and charity. And may the great God protect you all, and guide you in the ways of peace and concord, and grant us a joyful meeting at the great day of judgment.

I remember Mr. Alexander Campbell, minister of Inveraray, for whom I have a great value for his kind and good advices, told me that the fear of discovering any of my friends might be a temptation to me from making any confession of my knowledge of that murder.

Therefore, to do my friends justice, so far as I know, I do declare that none of my friends, to my knowledge, ever did plot or concert that murder; and I am persuaded they never employed any person to accomplish that cowardly action; and I firmly believe there is none of my friends who might have a quarrel with that gentleman but had the honour and resolution to offer him a fairer chance for his life than to shoot him privately from a bush.

Mr. Brown of Colston, Mr. Miller, Mr. Stewart, younger of Stewarthall, and Mr. Macintosh were my counsel, and Mr. Stewart of Edinglassie my agent. I do declare that I am fully satisfied they did me justice and that no part of my misfortune was owing to their neglect or want of abilities. And as they are men of known honour, I hope they will do justice to my behaviour during the trial.

I give it as my real opinion that if Allan Breck Stewart was the murderer of Glenure that he consulted none of his friends about it.

I conclude with my solemn declaration that I tamely submit to this my lot and severe sentence, and that I freely resign my life to the will of God, who gave me my first breath, and do firmly believe that the Almighty God, who can do nothing without a good design, brought this cast of providence in my way for my spiritual good.

## Speech from the Scaffold.

I die an unworthy member of the Episcopal Church of Scotland, as established before the Revolution, in full charity with all mortals, sincerely praying God may bless all my friends and relations, benefactors and well-wishers, particularly my poor wife and children, who in a special manner I recommend to His divine care and protection; and may the ever-blessed God pardon and forgive all that ever did or wished me evil, as I do from my heart forgive them. I die in full hopes of mercy, not through any merit in myself, as I freely own I merit no good at the hands of my offended God; but my hope is through the blood, merits, and mediation of the ever-blessed Jesus, my Redeemer and glorious Advocate, to whom I recommend my spirit. Come, Lord Jesus, come quickly.

Mr. Coupar, minister, showed me some queries a few days ago which he was desired to put to me. They are all answered already in my speech, excepting two, which are—Whether I knew Allan Breck's route from Ballachelish to Koalisnacoon, and from thence to Rannoch, before the murder happened? Answer—I declare before God I did not. Whether I interceded with James Drummond, in the Tolbooth of Edinburgh, to persuade or entice his brother Robert, who was already outbraved, to murder Glenure, and that I would give him a good gun for that purpose, and money for carrying him off the country, and that Ardsheall's interest would procure him a commission in France? Answer—I declare before God there never passed such words betwixt James More Drummond and me, or any proposal to that effect.



## APPENDICES.



## APPENDIX 1.\*

### LETTERS WRITTEN BY GLENURE.†

(1) LETTER FROM COLIN CAMPBELL OF GLENURE TO HIS BROTHER,  
JOHN CAMPBELL OF BARCALDINE.

Edr. 22nd Feb. 1744.

Dr. Broyr,—I have had so many letters from you that I'm ashamed to own I have made so few answers, yet this long scrawle which I fancy will tire you be an Appologie for former ommissions.

I ended wt Appine before he left this place which you need not make a secrete of and have sent my Charter of Portcharran to be confirm'd by Lord Glenorchy, which is not yet return'd. I had many mo. difficulties to fix matters with the laird than I imagin'd but now all is over. I'm told you had some skirmishes wt that country I hope you was not foil'd.

I'm very sorry for poor Pet. Cam.: it's a very great loss to us all, Ld. Breadalban and especially Ld. Monzie are in a great concern for him.

I remitt you to the Gasetta for Publick News all Britain is allarm'd wt. an Invasion which is now past a Jonck. Expresses arrive here every day from London wt fresh orders and it's asserted that Warrands are given out to apprehend suspected persons, particularly young Ld. John Drummond the Duke of Perth's Broyr.

Private news: your old Mistress Annie Campbell, Ld. Monzie's daughter run off wt. Lewt. John Menzies heir presumptive of Appine of Dow a few nights ago, which has put that good familie in great affliction.

The Master of Glen. is much better, Jack is very well, My Lady goes this night to the playhouse from thence to a privat Bawll and tomorrow to the Assembly.

This Parragraff for my sister Mrs Robison and all her good familie are well. Peggy goes to as many Diversions as is necessary for a young Ladie, but neglects no part of her learning in which I'm told she makes great progress and is a most charming Dancer. She is extremely happy in having Mrs Robison for her Guardian who is an exceedingly good kind woman and mighty well regarded here.

To be forwarded to Glencrerin Ballevolan's Daughter is a very fine lassie applys her schools very cless and I hope will convince John that his 40 stots are well bestow'd.

All I have to add for myself is that I begg you tell Allan whom I hope you will not neglect it in case they begin to sow in Gleniure and Creagan before I get home that he see they sow right seed corn and likewise desire the Boumen of Gleniure by no means to kill any calves of the cows that were double Isued on the Straith of

\* The contents of the Appendices are mainly arranged in chronological order, but it has not been possible to adhere to this rule in all cases.

† Reproduced from "The Bighouse Papers," by the kind permission of Captain Douglas Wimberley.

## James Stewart.

Gleniure, the Brown Bull I got from Airds is their Syre, and I want to keep them, male and female.

I assure you for all the stay I have made here I have not in the least dipt in love hitherto.

My kind complements to my sister Miss Robison and the young familie and all oyr. friends that please to enquire for me.

I am Dr Broyr

Yours

COLIN CAMPBELL.

(2) LETTER FROM COLIN CAMPBELL, GLENURE, TO JOHN CAMPBELL OF BARCALDINE, DATED 15TH NOVEMBER, 1744.

Edr. 15th Novr. 1744.

Dr Broyr—Just as I am writing this I receive yours and will deliver your Commission about lease to Lord B. Lord Glenorchy went of yesterday for London. I can say nothing of Mr Dowgall's affair, only it has no bad aspect yett and you may believe I'm not idle about it tho' I cannot promise for success.

The judicall Rentall was scandalous and to be sure for no good designe but I expected no oyr from that Quarter. Your letter to the Shirref was a very strong pathetick one, and I wish you wou'd write such anoyr as the scroll you sent me under cover to me to be delivered or not as I see cause. I have not yett seen the Shirref but propose to see him to-morrow.

Mr John M'Lachlan is come to town, but I hope he'll miss his errand.

I wish you woud send in the Shirref's answer to my sister's Letter or a scroll, as likewise a scroll of the Judicial Rentall taken by Airds and Baraggan.

I am obliged to stay here to clear my ffayrs. Intromission wt. the estates of Lochell and Clanronald, which accounts, as Sandie knows how my papers ly, I have writt him to send me pr. express. I referr you to Sandie about his own affair of Corregail I was resolved to risque my Court on it.

I am just now playing all my Polliticks to procure a commission for Allan in one of the head companies for the Highland Regt. but cannot promise for the success but will write you of it soon. I hope Allan is as dilligent for me at Gleniure and Creagan.

James Campbell the Lieut. was here one night, saw Ld. G., dined wt. me and went straight to winter quarters to put an end to the toils of the Companie. Senior Joanino told me upon his parting wt. James very gravely he woud be none of Cutick's Tutors, that he had once acted for James Campbell and woud not disseat him, which I as gravely take to be a matter of no great moment. I believe we'll get the brunt of the battle ourselves.

If you resolve I shou'd do anything in that affair while I am here I begg you send me in all the papers relating to it by the express Sandie sends me, and especially the paper of Judge — you got by Ld. G.'s letter if you don't they'll not overtake me here. James did not open his lips to me on the subject nor I to him, but I think 'tis time to do something in it now or never, If you are not apply'd to to submit it Butt if you are not pray send in all the papers that we may have some advice and light in the matter which James has and we want all this time.

## Appendix I.

I begg you'll take the trouble to send Gilpedder wt. a line to Duncan Campbell Lessmore to desire himself as well as the oyr. Tennants to have all their monie readie for me when I go home, you may believe I'll be very well appetis'd for it. I have no step but to clear the factor accounts. I likewise begg you desire Allan to keep a watchfull eye over them in Gleniure and Creagan and to give proper orders about my Cattle both there and in parks of Bars and be as diligent for me as I for him, tho' the success does not depend on myself.

I heard some odd stories here of my Broyr. Dun, and Gibbie M'Person about the little Girle his sister pray desire Duncan to write me the whole story as it happen'd. My best wishes to my sister and all your young familie.—I ever am yours

COLIN CAMPBELL.

P.S.—Tell Peggie I hear she's married and that I hope soon to see her at her own fireside: what further occurs I'll write by next post. M'Dougall will write you by next. He received your letter this day.

(3) LETTER FROM COLIN CAMPBELL, GLENURE, TO HIS BROTHER, JOHN CAMPBELL OF BARCALDINE, DATED 21ST APRIL, 1746.

Aberdeen 21st Apryle 1746

Dr Broyr,—I found your servant here whom I kept till this moment to try and send you the best accounts I could gett of the Victory gained by His R.H. over the Rebels.

I have sent you a printed account which was the first: But every account that comes here makes the number of the killed and Prisoners more than the first. I have sent you enclosed a list as was given up by an Express how [who] came here from our army this day, whom I saw examined here in the town house. The Argyleshire men by all accounts behaved gallantly and did great execution in the chase. I'm told they had two officers and 20 men killed but can't tell the officers names: Coll. Campbell is safe. It gives me great pleasure our friends behaved so well.

We have not yet gott so distinct accounts of particulars, but [it] is most certain it was a compleat victory and what I'm persuaded will put an end to the Rebellion. Numbers of prisoners are brought every moment. It's affirm'd the Pretender is wounded in his knee and thigh and gott off in a Chaise towards Fort Augustus.

I will now give you an account of poor Sandie. I found him just alive, and most miserably mangled, his spirits are better since I came hear. I think he'll live, but can never be a firm man: his face is much disfigured by the want of his teeth, but his worst cut is in his Hand, which I'm much afraid will be of little use to him. It's lucky 'tis his left hand. Lord Crawford was so good as allow me to come here for a few days, I must return to Perth in 2 or 3 days and design to send Robie here from Stirling to stay closely with Sandie till he carries him home. I begg upon receipt of this you send express to Robie to tell him that he meatt me at Perth and let him know that he must come and wait of our Broyr here: Butt att any rate he wait at Perth till I come there. I hope you'll not neglect this and I think you should write Bailie Dauskin the necessity there is for his parting with Robie for a month.

## James Stewart.

Ld. Crawford told me the moment I returned from this I must go to Argyleshire so that you may expect to see me over this or next week.

I am Dr. Broyr,  
Yours &c

COLIN CAMPBELL.

P.S.—I send you Sandie's letter, which was writt before I came.

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### APPENDIX II.

COPY OF A LETTER FROM MUNGO CAMPBELL, NARRATING THE MURDER OF COLIN CAMPBELL OF GLENURE, DATED 23RD MAY, 1752 (NINE DAYS AFTER THE MURDER), CONTRIBUTED TO THE *Oban Times*, 13TH JANUARY, 1883, BY PROFESSOR CAMPBELL FRASER, AND HERE REPUBLISHED BY PERMISSION OF THE PROPRIETOR OF THAT NEWSPAPER.

Fort William, 23rd May, 1752.

Dear Sir, The unhappy event which happened and which occasioned so much hurry and confusion to me since I saw you last, will, I hope apologise for my not being the first to acquaint you with Glenure's tragical end. I fancy he would let you know the occasion of his unfortunate expedition to Edinburgh,\* and of his bringing me along with him to this country. The multiplicity of differences subsisting betwixt himself and the Stewarts and Camerons made one the more ready to attend him, that I thought to make myself acceptable to both parties, by endeavouring in some measure to compose them. Our journey was very expeditious to Fort William, where we settled matters to a trifle with the tenants on the Estate of Lochiel; and on our return upon the 14th current from the country of the Camerons to that of the Stewarts, upon entering the middle of a thick wood in the latter, poor Glenure was shot, and had power to say no more than—"Oh! I'm dead: Mungo, take care of yourself; the villain's going to shoot you." On which I immediately dismounted and being a few paces before him, returned to where he was, and started up the brae where I imagined the shot came from, and saw the villain with a firelock in his hand, who on seeing me, though unarmed, made off without firing. Glenure still kept his horse; and I removed him off, unable to utter a word, but opened his breast to show me the wound. We had two servants along with us, but not a nail of arms among the whole. Immediately I despatched one of them to bring us some people; and he being near an hour away, night coming on, and on reflection having had reason to suspect his attachment, I with great difficulty prevailed on the other to see and find some people, lest we should lie in the wood all night, and that one person would be as good a defence as two against armed villains. Judge then on my situation, in the middle of Appin, surrounded by my enemies, and the doleful spectacle of my dead uncle before me, expecting every moment to be attacked, and entirely defenceless. In this

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\* In the beginning of May, to answer the bill of suspension of the intended action of Ardshiel tenants.

## Appendix II.

situation, however, I continued about an hour & a half, when the Appin people flocked about me in shoals (none of whom but pleased at everything had I shared my uncle's fate). I got a boat and conveyed the corpse to a house in Appin Glenure and I intended to lodge in that night, and had not a mortal to consult or advise with, but poor old Balleveolan, who came to me about one o'clock in the morning. These particulars I thought my duty to tell you, though no doubt you've heard them before now; and I fancy you are at no difficulty to think this inhuman murder has been perpetrated by those whose connection with the family of Ardsheal induced Glenure to think unfit to its to occupy the lands lately belonging to that gentleman. So human and unprecedented an assassination must annex eternal infamy on the country where it was committed, and on the offspring of the plotters of this horrid act. From Glenure's words and the situation of the place where I saw one of the villains, there's reason to believe there were more than one on the spot; and circumstances concur in convincing us that there were numbers of Lochaber as well as Appin Potintates in the combination. Sheriff Campbell,\* Airds, Barcaldine, and a good many others are now in the heart of Appin, with a party of the King's officers, examining on oath the country people as to their knowledge of this matter, but can make nothing of them. The odium seems generally to be put on one Allan Breck Stewart who had made threats against Glenure, and had come from the Highlands to the Low Scott country, and kept pace with Glenure and me back again all the way to Lochaber, and continued till twelve of the clock of the day of the murder was committed at a house near the ferry of Ballachulish, about a mile from the place where the murder was committed. This villain was made the instrument but numbers were his associates. I am at present resident with Colonel Crawford to be assisting to him in taking the necessary steps for advising; this gentleman being always ready to act with that laudable zeal for the service of his country that so much marks his character and appears in an eminent manner upon this occasion. His purse, as well as his fruitful invention, was the means of making discovery in my presence last night that I hope will bring the horrid villainy to light. In short, his prudence and activity has brought to light such a horrid chain of villainy and roguery against some principal people in both countries that cannot fail of contributing to fix the guilt of Glenure's murder. An account of the effects of last night's discovery is not yet come to our hands, but I hope my next will bring you some satisfaction and information. Colonel Crawford's friendship to us on this occasion in general is unprecedented, and I find is to myself in particular no less sincere than it is valuable. He is pleased to consider my little services on this melancholy occasion worthy more notice than I consider they deserve, and has wrote to General Churchhill strongly in my favour, desiring that Glenure's factory should be offered to me; and says that as Peter Campbell will in all probability be turned out, which I have good reason to believe will be the case, he'll do his utmost to secure me both; and indeed, the one without the other can be of no great consequence to me. Glenure's burial has been put off till Tuesday next, the 26th current, as Mrs. Campbell insisted on it in order that her father† might have time to come to the interment. The express is now come this length, and Bighouse's letter, which I have perused, is truly suitable to the melancholy situation his worthy daughter

\* Glenure's younger brother, who succeeded him as laird of Glenure.

† Mackay of Bighouse.

## James Stewart.

is in. He is indisposed, and cannot attend, which will bear extremely hard on the Lady Glenure, whose good sense is hitherto proof against all the weakness of her sex. I have just now parted from Colonel Crawford, who expects to prevail on Lord Bury and Colonel Howard to go by sea on Monday [the 25th] the length of Barcaldine, and from thence ride to the place of interment [at Ardehatten], and attend Glenure's burial; who they are satisfied died a martyr of doing his duty. I have not heard what settlement Glenure has made in his Contract of Marriage, only, I wish, from some bonds I wrote for him lately, excluding executors, the daughters may not be sorrily provided for. I have very little time allotted to me for writing you this confused scroll. I hope you'll therefore excuse any inaccuracy in it, and believe that I sincerely wish to convince you how much and really I am, dear Sir, your most affectionate and obliged servant,

M. CAMPBELL.

N.B.—There's a son, Bailie Juras, who is bad of a consumption, lodges in the coachman's house at the back of the yard, was left to my care by young Stonefield; if you'll please to enquire about him it would be kind. Since writing the above I have been by Colonel Crawford introduced to Lord Bury and Colonel Howard; they have been pleased to write both to General Churchill and Justice Clerk in my favour; and they, Colonel Crawford, and Captain Hows, nephew to Lord Hows, are to honour Glenure's interment with their presence.

M. C.

### APPENDIX III.

#### PROCLAMATION AS TO THE APPIN MURDER.

*The London Gazette, from Tuesday, 26th May, to Saturday, 30th May, 1752.*

At the Council Chamber, Whitehall, the 28th of May, 1752.

*Present*—Their Excellencies the Lords Justices in Council.

WHEREAS it hath been represented to their Excellencies, the Lords Justices at this Board, that Colin Campbell of Glenure, who had been appointed by the Court of Exchequer in that part of Great Britain called Scotland, to be the factor or steward upon the estates of Charles Steuart of Ardshiell, lately attainted of high treason, but fled from justice beyond the seas, having received directions from the said Court to remove all the tenants belonging to the said Charles Steuart (some of them his near relations, and all of whom had been in the late Rebellion) from the possessions they had obtained of him before the attainer. The said Colin Campbell did, upon Thursday, the 14th of this instant May, proceed to execute the decrees of the said Court, taking with him a messenger (being the proper officer for that service), as also a nephew of his own and a servant; and in the

## Appendix IV.

way as they passed through a wood on the farm of Lettermore, in Duror, in Argyllshire, part of the said forfeited estate from which the tenants were to be removed, the said Colin Campbell was, from behind a bush, shot dead on the spot; and whereas it is highly necessary that the person or persons who committed or were concerned in that said cruel and detestable murder, in violation of the peace and defiance of the laws of this realm should be brought to speedy and exemplary punishment. It is hereby ordered by their Excellencies the Lords Justices, with the advice of his Majesty's Privy Council, and that of magistrates and other Civil officers whatsoever, and all other his Majesty's subjects, do make strict and diligent search and inquiry after the person or persons concerned in the said murder, and the authors, actors, and abettors thereof; and that they do apprehend and cease, or cause to be apprehended and ceased, the said offenders, that they may be punished with the utmost rigour of the law. And for the capital encouragement of all persons to be diligent and industrious in their endeavours to make such discovery, and for the better and more effectual bringing the offenders to justice, it is hereby further ordered, that if any person or persons concerned therein, except the person who actually shot the said Colin Campbell, shall discover any other person or persons concerned in the said fact, so as the person or persons thus discovered may be apprehended and convicted thereof, such discoverer or discoverers shall receive his Majesty's most gracious pardon. And it is hereby likewise further ordered, that any person or persons who shall discover and apprehend, or cause to be discovered or apprehended, any of the persons discovered in the said heinous offence, so as he or they be convicted thereof, they shall have and receive for every such person so convicted the sum of one hundred pounds, to be paid by the Receiver-General for Scotland, according to directions to be given for that purpose by the Right Honourable the Lords Commissioners of his Majesty's Treasury, who are hereby directed to give such orders accordingly. And all his Majesty's loving subjects are hereby required to use their utmost endeavours in their several stations and places to find out, discover, and apprehend the offenders as aforesaid, upon pain of his Majesty's highest displeasure.

W. SHARPE.

## APPENDIX IV.

### EXTRACTS FROM CONTEMPORARY NEWSPAPERS RELATING TO THE MURDER AND EVENTS PRIOR TO THE TRIAL.

(*Edinburgh Evening Courant*, 21st May, 1752.)

Upon Thursday, the 14th inst., Colin Campbell of Glenure, Esq. one of his Majesty's Justices of the Peace for the County of Argyllshire, and factor on the forfeited estates of Lochiel and Ardsheal, was barbarously murdered in a wood in the country of Appin, near to the house of Ardsheal, as he was returning homewards, after being upon the business of his factory upon these estates, by some Assassins, who fired at him out of a bush, and then made their escape.

## James Stewart.

(*Courant*, 28th May, 1752.)

The following letter, containing some particulars of Colin Campbell of Glenure, Esq., was written by a brother of the deceased to a gentleman in Edinburgh, his near relation:—"Taindrome, 18th May, 1752. Dear Sir,—I am this far in my way to Argyleshire to pay my last duty to poor Glenure, who on Thursday last the 14th current was shot dead in Appin, by some of the Stewarts, from behind a bush, as he was riding home, near the house of Ardshiels. The person suspected of the murder is one Allan Breck Stewart, a French cadet, who was in Appin at the time. He is about 5 feet 10 inches high; his face much marked with the small Pox, black bushy hair put up in a bag, a little in-knee'd, round shouldered, has full black eyes, and is about 30 years of age. He is dressed much like a French cadet shabby with an inclination to be genteel. It is possible he may disguise himself and in all probability endeavour to take shipping on the north east coast from Aberdeen, Montrose, or Dundee. Pray be upon the outlook and send to your friends along the coast-side, the above description, which I hope will find him out, tho' he may assume a borrowed name. All the Firth of Forth is apprised of this matter, as is the Clyde."

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(*Courant*, 2nd June, 1752.)

We are certainly informed that by a letter from the Right Honourable Earl of Holderness, one of his Majesty's principal Secretaries of State, to the Lord Justice Clerk, his Lordship takes notice, that he had laid before the Lords Justices an account of the execrable murder of Mr. Colin Campbell of Glenure, committed upon Thursday, the 14th May last; and their Excellencies having taken into their consideration the insolence of this attempt and several aggravating circumstances which attend it, have determined to offer a reward of £100 each to such person or persons as shall discover the author or authors of this wicked action, and a free pardon to any person concerned who shall discover his or their accomplices, so that he or they be brought to justice, excepting the person who actually committed the murder and directions are sent to the Sheriff Deputy of Argyleshire to affix upon all the Church doors within his jurisdiction an advertisement to this purport.

We hear that 200 soldiers belonging to Fort William keep garrison at the Laird of Appin's house, where we are told they will continue till the search for the murderers of Mr. Campbell of Glenure is over.

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(*Caledonian Mercury*, Saturday, 8th June, 1752.)

On Saturday morning one John Macgrigor a Perthshire man and lately a gentleman's servant was taken out of a ship in Leith road bound for London by the crew of the "Porcupine" sloop of war lying there on suspicion of being concerned in the murder of Glenure and brought up to town, when after being examined by the Lord Justice Clerk and Lord Advocate he was committed to the castle till further examination.

## Appendix IV.

(*Courant*, 8th June, 1752.)

It appears by a proclamation in the London Gazette that on the 28th of May last, their Excellencies the Lords Justices in Council, for the encouragement of all persons to be diligent and industrious in their endeavours to discover the person or persons concerned in the cruel murder of Colin Campbell of Glenure, his Majesty's factor upon the estate of Charles Stewart, late of Ardsheill, attainted, and the authors, actors, and abettors thereof, and that they may be better and more effectually punished with the utmost rigour of the law, have ordered that if any person or persons concerned therein except the person who actually shot the said Colin Campbell, shall discover any other person or persons concerned in the said fact so as the said person or persons thus discovered may be apprehended and convicted thereof, such discoverer or discoverers shall receive his Majesty's most gracious pardon. And their Excellencies have further ordered that any person or persons who shall discover or apprehend or cause to be discovered and apprehended any of the persons concerned in the said heinous offence, so as he or they may be convicted thereof, shall have and receive for every such person so convicted the sum of one hundred pounds sterling, to be paid by the Receiver General for Scotland according to the directions to be given for the purpose, by the Right Honourable the Lords Commissioners of his Majesty's Treasury, who are thereby directed to give such orders accordingly. And all his Majesty's loving subjects are thereby required to use their utmost endeavours in their several stations and places to find out, discover and apprehend the offenders aforesaid on pain of his Majesty's highest displeasure.

(Note.—This proclamation was inserted in each number of the paper up till 30th June; also in the *Caledonian Mercury*.)

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(*Courant*, 9th June, 1752.)

We hear from Fort William that 12 persons have been taken up, and are confined there on suspicion of being concerned in the murder of Mr. Colin Campbell of Glenure.

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(*Courant*, 15th June, 1752.)

[Extract from a letter from Stirling, 10th June.]

On Monday 18th current in the forenoon the country people about Glins, 8 or 9 miles westward from this place, discerned smoke coming out of an uninhabited cottage in two different places. They gathered themselves together, thinking it might be the rendezvous of some lawless gang. Upon coming thither they found two fellows roasting legs of mutton, upon beam spits, at 2 different fires, and another fellow preparing more to roast. They apprehended the three and on searching the house found 18 legs of mutton altogether with the skins whereby they knew the sheep to be the property of the Laird of Glins. Two of the fellows escaped out of their hands, but they brought the third into a prison who says his name is Allan Cameron and that he only joined

## James Stewart.

the rest in the spring at Lochaber, though he will not discover his associates as presumed from so much provisions, which they could not stay long to consume in the cottage, that they must be numerous; and it is supposed that the murderer of Glenure is one of this desperate gang.

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(*Courant*, 16th June, 1752—Advertisement.)

Whereas Allan Breck Stewart who for some time past has been in the French service, is greatly suspected of being a particular actor in the murder of Colin Campbell of Glenure, Esq., late factor on the forfeited estates of Ardsheill, and as he absconds and has fled from justice the relations of Mr Campbell of Glenure do hereby offer a reward of £100 sterling, to any person or persons who shall apprehend the above Allan Breck Stewart so he be confined in any public gaol or prison; such reward to be paid by Robert Campbell Merchant of Stirling, brother of Glenure, upon producing a certificate to him of the said Allan Breck Stewart his being in sure custody, and that over and above the reward offered by the Government in the late proclamation for apprehending and bringing to justice the murderers of the above Colin Campbell. Allan Breck Stewart is about 5 feet 10 inches high, his face much marked with the small Pox, black bushy hair which he usually put up in a bag, a little inknee'd, round shouldered, and is about 30 years of age, shabbily dressed.

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(*Courant*, 20th July, 1752.)

They write from Annan that a person was lately seized there, and sent prisoner to Carlisle, on suspicion of his being concerned in the murder of Mr Campbell of Glenure, but refusing to give any distinct account of himself an order has been issued for bringing him hither, if he shall be found to be the person suspected.

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(*Caledonian Mercury*, 21st July, 1752.)

[Extract from a letter from Carlisle, 11th July, 1752.]

Last Tuesday was brought to our gaol a person that goes by the name of George Blair on suspicion of killing Mr Campbell of Glenure; he was apprehended by a sergeant of the Welsh Fusiliers, within two miles of this city and had on when taken a dark grey coat, buff coloured waistcoat and black breeches with a feather and black cap which he had; he is about 22 years of age, is 5 feet 11 inches high and has a great scar on his left cheek. He has not as yet given any satisfactory account of himself.

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(*Courant*, 27th July, 1752.)

By a gentleman from Carlisle we are assured that the person taken up on suspicion of being Allan Breck Stewart happens to be one George Blair some time a sergeant in the Dutch service, and that upon producing fresh testificatos he is now set at liberty.

## Appendix IV.

(*Courant*, 10th August, 1752—Advertisement.)

As by some late intelligence there's great reason to believe that Allan Breck Stewart, the supposed murderer of Colin Campbell of Glenure, is still lurking in this country, the friends of the said Colin Campbell beg leave to recommend to those who have interested themselves to continue their endeavours in securing and bringing him to justice.

N.B.—The reward offered by the Government, and the above friends, for securing the said Allan Breck, or any other concerned in the said murder, shall be paid as mentioned in former advertisements.

(*Courant*, 13th August, 1752.)

We hear from Fort William that upon the 3rd current, two persons suspected for the murder of Glenure were sent from that place to Inverary, and some others now in custody will soon be translated after them to stand trial.

### EXTRACTS FROM CONTEMPORARY NEWSPAPERS RELATING TO THE TRIAL.

(*Courant*, 2nd September, 1752.)

Thursday last came on at Inverary, before the circuit court there, the trial of James Stewart, indited as art and part of the murder of Colin Campbell of Glenure Esq., late factor on the forfeited estate of Ardsheills when the relevancy of the libel was determined; and on Friday morning the court proceeded to the examination of witnesses, which continued to 4 o'clock Sabbath morning following, after which evidences pro and con being summed, about seven the jury were inclosed, and sat till betwixt 11 and 12 that forenoon; on Monday they returned their verdict unanimously finding that pannel guilty art and part of the murder of Glenure. He is sentenced to be hanged on 8th of November next, on a conspicuous eminence on the south side of Ballinachelish near where the murder was committed, and to be afterwards hung in chains there.

(*Scots Magazine*, October, 1752.)

The Court sat down on Thursday Sept. 21. N.S. Allan Breck Stewart was called, in common form, but did not appear; and he was therefore fugitated.—Then, after long pleadings on the relevancy with respect to James Stewart, the court "found the libel relevant to infer the pains of law, That, time and place libelled, the deceased Colin Campbell of Glenure was murdered, and that the pannel James Stewart was guilty art and part thereof; but allowed the pannel to prove facts and circumstances that might tend to exculpate him;" and adjourned till next morning. The court accordingly met again on Friday at six in the morning, and sat on the p.c. till seven on Sunday morning. There were forty-nine witnesses examined on the part of the prosecutors, and twelve on the pannel's, and no objection

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was made against any of them by either party. The evidence was summed up by the Lord Advocate against, and by Mr. Brown for the pannel. At seven on Sunday morning the jury were inclosed, and sat till twelve at noon. Next day, they returned their verdict, finding unanimously the pannel James Stewart guilty art and part of the murder of Colin Campbell of Glenure. On which verdict the court sentenced the pannel to be hanged on Wednesday the 8th of November next, N.S. on a conspicuous eminence, near to the place where the murder was committed, and adjoining to the ferry of Ballachelish being the most frequented passage between the countries of Appin and Lochaber; and ordained his body to be hung in chains at the place of execution.

P.S.—James Stewart was carried from Fort-William to Ballachelish Nov. 7. under a guard of 100 men of Brockland's regiment, and executed there next day, in terms of his sentence (460.). He was attended by Mr. Malcolm Macasquil minister of Kilmellie, and Mr. John Couper minister of Maryburgh. A letter dated Fort-William Nov. 9. gives the following account. "I was present yesterday at James Stewart's execution, who behaved with great decency and resolution. He had a paper which he afterwards signed, and delivered to the sheriff, containing a long narration of facts, and denying his accession to or knowledge of Mr. Campbell of Glenure's murder, in the most solemn manner."

(*Courant*, 2nd October, 1752.)

On Thursday, 21st inst., the trial of Allan Breck Stewart and of James Stewart in Aucharn in Duror of Appin, the first accused of being the actual murderer of Colin Campbell of Glenure, factor for his Majesty on the forfeited estate of Ardsheill and the last of being accessory to or art and part of the said murder, came on at the circuit court of Inverary before his Grace the Duke of Argyll Lord Justice General, and the Lords Elchies and Kilkerran, Commissioners of Justiciary, when Allan Breck Stewart not appearing to stand his trial, was fugitive, and the court after hearing the pleadings for and against James Stewart pannel by the counsel on both sides "found the libel relevant to infer the pains of law; that is, time and place libelled the deceased Colin Campbell of Glenure was murdered and that the pannel James Stewart was guilty, actor or art and part thereof: but allowed the pannel to prove all facts and circumstances that might tend to exculpate him;" and adjourned to Friday, the 22nd at 6 in the morning; from which time to Sunday the 24th at seven in the morning the court continued sitting, before the proof was concluded, during which sederunt 49 witnesses were examined against the pannel, without his objecting against any one of them and 12 witnesses were examined on his exculpation without any objection on the part of the prosecutors, after which the evidence was summed up by his Majesty's advocate against, and by Mr. George Brown advocate for the pannel; and the jury being inclosed at seven in the morning, sat till twelve at noon and upon the 25th returned their verdict finding unanimously the pannel James Stewart guilty art and part of the murder of Colin Campbell of Glenure: upon which verdict the court sentenced the pannel to be hanged upon Wednesday the 8th day of November next (according to present stile) on a conspicuous eminence near the place of the murder and adjoining the ferry of Ballinachelish being the most frequented passage

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betwixt the countries of Appin and Lochaber, and thereafter ordained his body to be hung in chains at the place of his execution. The counsel for the King and for the private prosecutors (being Janet Mackay, [widow] of the deceased Colin Campbell of Glenure for herself, and on behalf of Elisabeth and Lucy Campbells her infant children) were the Lord Advocate, who attended this circuit court in person, Mr. John Carmichael advocate depute, Mr. Simon Fraser commonly called Master of Lovat, a little ago called to the bar, Mr. James Erskine sheriff depute of Perthshire, Mr. John Campbell the younger of Stonefield, and Mr. Robert Campbell of Ardnish; and the counsel for the prisoner were Mr. George Brown, sheriff depute of Forfarshire, Mr. Thomas Miller Stewart, depute of Kirkcudbright, Mr. Walter Stewart and Mr. Robert MacIntosh.

Thereafter a petition was offered to the court on behalf of Allan and Charles Stewart sons of the said James Stewart, and also in custody on suspicion of their accession to the said murder praying a warrant to give notice to his Majesty's advocate to affix a time for bringing on their trial as the Act 1701 directs or that they might be admitted to bail, whereupon his Majesty's advocate for the King, and Mr. Campbell of Barcaldine for the widow and children of the deceased, declared and signed their consent that Charles Stewart the younger of the said petitioners might be admitted to bail, and the court gave orders for that purpose and warrant for giving notice to bring on the trial of Allan.

### EXTRACTS FROM CONTEMPORARY NEWSPAPERS RELATING TO THE EXECUTION AND SUBSEQUENT EVENTS.

(*Caledonian Mercury*, 13th November, 1752.)

They write from Fort William of the 7th inst. that on that date at nine in the morning James Stewart was carried thence for Ballinachellish the place appointed for his execution, escorted by 100 men of Colonel Brockland's regiment stationed there and attended by the Rev. Mr. Malcolm Macaskill minister of Kilmalie and Mr. John Cooper minister of Maryborough.

(*Courant*, 13th November, 1752.)

We hear from Fort William, that James Stuart mentioned as formerly under sentence of death for being art and part in the murder of Colin Campbell of Glenure was carried from the place to Ballachallish by three companies of soldiers and executed there on Wednesday last, according to the sentence of the Lords of Justiciary.

(*Caledonian Mercury*, 14th November, 1752.)

Extract from a letter from Fort William, November 9th.

I was present yesterday at James Stewart's execution, who behaved with great decency and resolution. He read a paper which he afterwards signed and delivered to the Sheriff containing a long narration of the facts and denying his accession to or knowledge of Mr. Campbell of Glenure's murder in the most solemn manner.

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(*Courant*, 21st November, 1752.)

The following is an extract of a letter from Inverary anent the execution of James Stewart at Ballachallish on the 8th current. The command of soldiers escorting the prisoner came to the north side of the ferry upon the evening of the 7th, when it blew so hard that they could not cross until the morning of the 8th. The prisoner was attended by Mr. William Caskill Minister of Kilmalie and Mr. Couper minister at Fort William (P) and a few of his friends. A little after 12 they got to the place of execution where was erected a small tent that contained the two ministers and the prisoner, and after a short prayer by the ministers the prisoner produced three copies of a speech, one of which he gave to the Sheriff Substitute of Argyle Shire, another to Captain Welch commanding officer, and asked leave to read the third copy; which being granted he with an audible and distinct voice read a very extraordinary speech, and when he had done reading gave the third copy to Mr Douglas Sheriff Substitute of Inverness. Then the Sheriff Substitute of Argyleshire told the prisoner that he was greatly surprised at such a speech from one in his situation, and though it was not his purpose to make any observations on what he had read as the time was short; yet he could not help noticing that there were several things asserted in the speech which he knew to be false; that he would only mention one in the circumstances namely his lawyers being twice interrupted by some of the jury after the proof was closed; that the real fact was that one of the jury did desire his lawyer to be as short as possible as the trial had lasted so long; but immediately other two of the jury got up and in place of interrupting desired him to go on, and that he would be heard with the greatest patience. Charles Stewart writer in Banavie, who was one of the friends that attended the prisoner and was present at the trial (without being asked) owned that what the Sheriff Substitute had said was the true state of the facts upon which the prisoner said he understood it other ways, and was sorry if he had asserted anything that was not true; upon this the prisoner kneeled, and read a very long written prayer, then the other minister sang psalms and prayed. The prisoner took leave of his friends, mounted the ladder with great composure and resolution, and read a short written prayer with an audible voice.

The storm was so great all this time that it was with the utmost difficulty one could stand upon the hill, and it was near five before the body was hung in chains yet there were a great number of the country people present; and 15 men of the command in Appin are stationed at Ballinachelish to prevent the gibbets being cut down.

(*Scots Magazine*, December, 1752.)

Edinburgh.

James Stewart's dying speech is a subject of much consideration.—We are told that immediately after sentence was pronounced against him, he addressed the judges, declaring, as in the presence of Almighty God, that he had no previous knowledge of Glenure's murder: adding, that some of the witnesses had deposed untruths against him; but that he forgave them; as he did likewise the jury, who found him guilty on such slender evidence.

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P.S.—In the *London Evening Post* of Dec. 5 we see the following paragraph:—"We are informed by a private letter from Argyleshire, that the ancient animosity between the Stewarts and Campbells is likely to revive, on the force of hanging James Stewart of Ballinachelish, on account of the murder of Colin Campbell of Glenure. The circumstances of trying Stewart at Inverary, the seat of the Duke of Argyle, in what his friends fix upon to convince the world that he was hastily and unjustly condemned." The court of Justiciary, upon an application made to them, issued a precept, Nov. 29. for liberating Allan Stewart, James's son, he having run his letters.

(Extract from the *Scots Magazine*, 5th December, 1752.)

We hear that in regard no process had been raised nor insisted in against Allan Stewart eldest son of James Stewart lately executed at Ballinachelish and who was contained for some time in Fort William on suspicion of being accessory with his father and Allan Breck Stewart in the murder of Glenure the Lords Justiciary have issued their precept for setting the said Allan Stewart at liberty.

(*Scots Magazine*, October, 1755.)

According to an account which we have received but lately, the body of James Stewart was blown down from the gibbet on the 30th of January last. It was put into a hut which had been built for the military guard that watched it, and notice was sent to the Sheriff. Soon after an order was transmitted from the Lord Justice-Clerk to hang up the body again, and for that purpose to raise it in case it should be buried before the order arrived; and also to cause a precognition to be taken in order to discover by whom it was taken down. The body was again hung up on the 17th of February, and the precognition discovered plainly that it had been blown down by the wind. The guard was removed in April, 1754.

## APPENDIX V.

### THE OFFICE OF LORD JUSTICE-GENERAL.

By JOHN I. FALCONER, LL.B.

The office of Lord Justice-General in Scotland originally corresponded to that of Chief Justiciar of England, who was *capitalis Justiciarius totius Angliæ*, having universal jurisdiction in all matters pertaining to the administration of justice. The Lord Justice-General of Scotland, or Justiciar, as he was called, was appointed by the King, and in his name held the King's Court, the *Curia Domini Regis vel Justiciarum*, either alone or in company with his deputies. He took supreme cognisance of all matters, both civil and criminal. The office was early divided between two

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Justiciars, one for Scotland north of the Forth (beyond the *Scottish Sea*), and the other for Landone, or the country south of the Forth. Each Justiciar within his own territory exercised supreme powers. In 1305 Edward I., by his "*ordinacio facta super Stabilitate regni Scocie*," divided the realm into four territories, but after several plans had been tried, one commission was again reverted to in the time of Queen Mary. The "*Discours particulier d'Ecosse*" bears, "*Et aussi y a en ce Royaume Justice Generale, laquelle a puissance de cognoistre en tous crimes. Et combien que pour ce jourd'huy n'y en ait qu'un, toutes fois le temps passé y'en avoit deux. L'un estait par de-là la riviere de Forth, tirant vers le North, et l'autre de l'austre costé de la riviere, tirant vers le South.*" Circuits or Ayres were held by the Justices, when all matters both civil and criminal were dealt with.

At this early period there existed no other supreme tribunal whose functions were purely judicial, but the Court of Parliament was partly occupied in reviewing the decrees of inferior judges, and in hearing complaints against their administration. The judgments of the Justices' Ayres in civil matters were not exempt from review, and many instances are recorded of their being overturned.

In criminal matters, however, there appears to have been no appeal from the Justiciar's sentence. The turbulent spirit of the times rendered the speedy execution of sentence essential, while protection to the servants of the law was afforded by the presence of the Justiciar and his Barons. No recorded instance of an appeal in a criminal case appears in the records, and, indeed, the statute Alexander II., cap. 2, "*de capiendis indictamentis et malefactoribus puniendis*," was evidently intended to preclude any such step. It provides, "*Omnes convicti de furto vel homicidio coram Justiciariis, Baronibus tradantur, vel eorum Ballivis, ad faciendam justiciam de eis, in eorum liberis Baronibus, sine aliqua redemptione, vel remedio, nisi gratia Domini regis introveniat.*" The only recourse for the convicted prisoner was, accordingly, an appeal to the King's mercy, a privilege which the difficulties of communication would render in most cases of somewhat uncertain value.

The duties of the Justiciar's office were originally exercised by the King in person, and, it would appear, with more acceptance by himself than by his deputy. In 1357 the following interesting enactment was passed for David II.:—"*Ordinatum est et consensum per tres communitates, quod dominus noster Rex teniat Iter Justiciarii, per totum regnum, in sua propria persona; precipue ista vice, propter pleniorum justiciam auctoritate regia faciendam, et ad incutiendum terrorem delinquentibus, ut abstineant a maleficiis suis.*" And in the statute 1526 cap. 6 a special appointment of Justices' Ayres is made, and it is declared, "*that our Sovrane Lord be personalie present at the halding of the said Justice Airis, geif it plesis his Grace,*" and ends, "*that na Justice Airis be haldin na part without our Sovrane Lord and his Justice be present.*"

No limitation of the original Commission of the Justiciar took place until the establishment of the present Judicature in 1532. In the reign of James I., and again in the reign of James IV., attempts were made to establish a Supreme Court for civil causes, but these attempts proved ineffectual, owing to the limited jurisdiction which was committed to the Courts. The establishment of the College of Justice, however, in the reign of James V. effectually deprived the Justiciar of his civil power.

A good illustration of the arbitrary manner in which justice was administered in these days is afforded by the early history of

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the College of Justice. The Act of Institution, after providing for the constitution of the Court, and after prescribing certain qualifications for its judges, contains the declaration, "that sic either Lordes as sall please the King's Grace to enjoin to them of his gret counsile to have vote siclik to the nomer of thre or four." This power was early taken advantage of by the Crown, sometimes as many as seven and eight Extraordinary Lords being added, and sometimes additions being made for the trial of particular causes. The statutory qualifications were held to apply only to Ordinary Lords, so that no restriction was placed upon the King's nomination. The Extraordinary Lords were removable from office by the King at pleasure, and they were, for the most part, quite unskilled in legal procedure. Their attendance was very irregular, and some of them only appeared when an opportunity offered for obliging themselves or their friends. The abuse of this privilege by the Crown provoked much dissatisfaction, but although repeated representations were made and many promises of improvement exacted, the practice continued, until, by statute George I., cap. 9, it was provided that any vacancy thereafter was not to be filled by the Crown. The last Extraordinary Lord was John Hay, Marquis of Tweeddale, who died on 9th December, 1762.

The powers of the Lord Justice-General in criminal affairs were unaffected by the establishment of the Judicature in 1532, and they continued to be exercised by him as formerly, in virtue of his Royal warrant. Like many other appointments, however, the office gradually ceased to be bestowed upon the persons best qualified to discharge its duties, and eventually it became the hereditary possession of one family, who held it by charter, like any other feudal subject. The exact date at which it fell to the Argyll family is difficult to determine, but the Earl of Argyll is mentioned as Justice-General in the sederunt of a Court held in 1526. Whether the family then held the office by hereditary title or not, is not quite clear, but probably they did, and the absurdity of regulating the appointment to an office which required such high qualifications by the means then in use seems to have become acutely felt. The statute 1581, cap. 82, enacts "that our Souvran Lord cause his Justice-General to mak aucht deputes," and on 25th January, 1624, not long before the Argyll family resigned office, a commission was granted to Sir George Erskine of Innerteil, which contains no reference to the resignation of the hereditary holder. The hereditary commission was finally cancelled by contract in 1628 between Charles I. and Archibald Lord Lorn, when it was resigned *ad remanentiam* into the hands of the King, reserving, however, the office of Justiciar-General for the sheriffdoms of Argyll and Tarbert, and certain other lands specially mentioned held under the family of Argyll; and it was thereafter gifted by the King to members of the nobility for more or less short periods.

In 1672 the Court of Justiciary was established by statute, which formed a final and thorough delegation of the King's judicial powers. Circuit Courts were appointed to be kept once a year in various towns by two of the judges, "the Justice-General being always supernumerary in any of these Circuit Courts." The statute 1681, cap. 18, declared that the King still had power by himself to take cognisance and trial of any cause, but this was repealed by the Convention of Estates in 1689. Down to 1830 the office of Lord Justice-General, the head of the Justiciary Court, remained entirely distinct from that of Lord President of the Court of Session. The holder was not necessarily a lawyer, and from this there arose a peculiar method of voting in that Court

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which remains in use at the present day. When the ordinary quorum of three is present and the two other judges agree, the presiding judge has no vote. If, however, they disagree, he has a vote. When the number of judges exceeds three, and is an even number, including the presiding judge, and their opinions are equally divided, the judgment is contrary to the opinion of the presiding judge.

By the Jurisdiction Act of 1747, 20 Geo. II., cap. 43, the country was divided into several Circuit Ayres, and places were appointed where these Courts were to be held periodically. The heritable rights of Justiciary for the county of Argyll and the Western Isles were suppressed, and this territory was assumed into the Western Circuit. The burgh of Inveraray was declared to be the sitting place for the shire of Argyll and Bute.

On 1st June, 1708, Archibald Campbell, Earl of Ilay, afterwards Duke of Argyll, took his seat as an Extraordinary Lord on the resignation of his brother. On the resignation of the Earl of Cromarty in 1710, he was constituted Lord Justice-General of Scotland. On the death of his brother in 1743, he became third Duke of Argyll, hereditary Justiciary, Sheriff and Commissary of Argyllshire and the Western Islands. The latter offices, however, he demitted under the Jurisdiction Act in 1747, and he was allowed for the office of Justiciary of Argyllshire £15,000, and for the Sheriffship of Argyll £5000. He therefore attended the Ayres at Inveraray in 1752 solely in virtue of the commission of Lord Justice-General which he held. Unlike many of the Extraordinary Lords, his Grace had received a liberal legal education both in this country and on the continent, and seems, by his experience and his attainments, to have been by no means unfitted for the high judicial position which he occupied.

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## APPENDIX VI.

### BIOGRAPHICAL NOTES.

#### (1) THE PRIVATE PROSECUTORS.

MRS. JANET MACKAY OR CAMPBELL, widow of Colin Campbell of Glenure, was the eldest daughter and third child of the Hon. Hugh Mackay (son of George, third Lord Reay), Lieutenant-Colonel of the First Sutherland Regiment, and Elizabeth Mackay of Bighouse (eldest daughter and co-heiress of George Mackay of Bighouse), who died on 31st March, 1769. Their marriage contract was signed on 15th July, 1728, so Janet Mackay must have been about seventeen or eighteen years of age when she married Colin Campbell on 9th May, 1749. Three children were born of the marriage, namely, the other two private prosecutors, and Colina, a posthumous child, who is described by her cousin, Lieutenant-Colonel Alexander Campbell, writing from Edinburgh, 1770, as "a very fine girl, and would have been much noticed here if she had passed the winter at Bath. She is very like her father in looks and temper." She married James Baillie of Ealing Grove, Middlesex (a foreign merchant and second son of Hugh Baillie of Dochfour, Inverness-shire), and had issue. Her husband became member of Parliament for Horsham. Mr. W. B.

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Blaikie's collection of manuscripts contains several of Mrs. Campbell's letters. A letter written by Glenure's nephew, Alexander Campbell, three days after the murder, contains the statement, "My aunt has behaved like an angel. No woman ever behaved with more prudence."

ELIZABETH CAMPBELL, daughter of Glenure. She died young and unmarried. In a letter written by Mr. Robert Campbell, merchant in Stirling, a brother of Glenure's, dated 30th August, 1759, and addressed to Barcaldine, the following description of Elizabeth and her sisters occurs:—"The mother and the children are here, and finer girls I never in my life beheld. They are very lively, sweet-tempered, well-behaved, and very handsome. My heart warmed to them, for the eldest and youngest is very like their father. I am sure so will yours, whatever time you see them. They will, if spared, be a credit to us all."

LUCY or LOUISA CAMPBELL, also a daughter of Glenure. In 1770 she inherited, through her grandfather, part of the estates of Bighouse, and was married on 11th June, 1768, to her relative, George Mackay of Handa, who purchased the remainder of the Bighouse estates, and who became Lieutenant-Colonel of the famous Reay Fencibles. They had twenty-one children. This lady survived till 1834. Her portrait was painted by Raeburn, and is reproduced in "The Book of Mackay," a clan history by the Rev. Angus Mackay, M.A., Westerdale, Caithness.

### (2) THE OUTLAW.

ALLAN BRECK STEWART, as has been mentioned in the Introduction, was a son of Donald Stewart *alias* Vic Ian Vic Allister, sometime of Inverchomrie, in Rannoch. After events with which the reader is now familiar, he escaped to France. A letter written by Campbell of Achalader, contains the assertion (see p. 361 *infra*) that it was said in Scotland that Allan reached France in March, 1753, and that he accused "Allan beg" (probably James Stewart's son Allan) of having murdered Glenure. Much weight cannot be placed on this assertion, even if authentic. From the anonymous letter of 12th June, 1753 (see p. 364 *infra*), it appears that he remained at Lisle (Lille) for some time, though the officers of his old regiment (Ogilvy's) seemed to have declined further association with him. Several plots for apprehending him were well conceived, but the wily soldier escaped apprehension. For many years his doings are unrecorded, but he seems to have survived till the time of the Revolution. A well-known reference to him appears in the Appendix to Sir Walter Scott's "Rob Roy." Its terms are these—"About 1789 a friend of mine, then residing in Paris, was invited to see some procession which was supposed likely to interest him from the windows of an apartment occupied by a Scottish Benedictine priest. He found, sitting by the fire, a tall, thin, raw-boned, grim-looking old man, with the *petit croix* of St. Louis. His visage was strongly marked by the irregular projections of the cheek-bones and chin. His eyes were grey. His grizzled hair exhibited marks of having been red, and his complexion was weather-beaten and remarkably freckled. Some civilities in French passed between the old man and my friend, in the course of which they talked of the streets and squares of Paris, till at length the old soldier, for such he seemed, and such he was, said with a sigh in a sharp Highland

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accent, 'Deil ane o' them a' is worth the Hie Street of Edinburgh.' On inquiry, this admirer of Auld Reekie, which he was never to see again, proved to be Allan Breck Stewart. He lived decently on his little pension, and had in no subsequent period of his life shown anything of the savage mood in which he was generally believed to have assassinated the enemy and oppressor, as he supposed him, of his family and clan." I am greatly indebted to Miss Violet M. Montagu, 23 Avenue du Bois de Boulogne, Paris, for her kind endeavours to trace Allan Breck's life in France. Neither in the records of the Scots regiments nor in those of the Order of St. Louis, can any trace of him be found. Indeed, Miss Montagu has been assured by the librarian of the Bibliothèque Nationale in Paris that no Order of the Petit Croix of St. Louis ever existed.

### (3) THE JUDGES.

ARCHIBALD, THIRD DUKE OF ARGYLL, was the second son of Archibald, tenth Earl and first Duke of Argyll. He was born at Ham, in Surrey, in June, 1682. He was educated at Eton, and remained in England for seventeen years, and subsequently attended Glasgow University. He studied law at Utrecht, but afterwards entered the military profession. He served under Marlborough, and was for a time Governor of Dumbarton Castle. Ere long his fancy led him into political circles, and in 1705 he became Lord High Treasurer of Scotland. He was one of the Commissioners for the Union of the Parliaments, and was created Earl and Viscount of Islay. On 1st June, 1708, he took his seat as an Extraordinary Lord of Session, and in 1710 he became Lord Justice-General of Scotland. During the Rebellion of 1715 he rendered military service, and was twice wounded at the battle of Sheriffmuir. In connection with the riots caused by the imposition of the malt tax he gave valuable service to the Government. In 1743 he succeeded his brother as Duke of Argyll. On 15th April, 1761, in his seventy-ninth year, he died in London, and was buried at Kilmun. He collected one of the most valuable private libraries in Great Britain. A portrait of this Duke, painted by Allan Ramsay, hangs in the Glasgow Corporation Galleries, and one by Aikman in the Parliament House, Edinburgh. The Scottish National Portrait Gallery contains a very rare mezzotint of Mr. Aikman's picture. He married Miss Walsefield, daughter of Paymaster of Marines, but had no legitimate children. His English estates were left to a woman named Williams, by whom he had an illegitimate son. The estates in Scotland and the dukedom fell to John Campbell of Mamore, so the present Argyll family are not descended from the subject of this note.

PATRICK GRANT OF ELCHIES, LORD ELCHIES (1690-1754), was a son of Captain Grant of Easter Elchies. He was called to the bar in 1712. He enjoyed an extensive practice. On 3rd November, 1732, he was elevated to the bench, and on 3rd March, 1737, he became a Lord of Justiciary. The notes of his decisions preserved in the Advocates' Library show him to have been a painstaking judge. In Tytler's "Life of Lord Kames" he is highly praised—"Assuming it as a fixed principle, that every case is governed by some general principle (unless it be taken out of this rule by its special circumstances), the only matter of exercise to the mind is the discovery of that principle. . . . In this habit lay the chief talent of Elchies. . . . His per-

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fect probity and sincere regard for justice were confessed by all." When he died at Inch House, near Edinburgh, on 27th July, 1754, the *Scots Magazine* said he left "the character of an honest man, a sincere friend, an able lawyer, a disinterested judge, and a zealous wellwisher of our present happy constitution." He collected the decisions of the Court of Session from 1733 to 1757, and wrote notes on Stair's "Institutes." His portrait, by Allan Ramsay, may be seen in the Parliament House and Scottish National Portrait Gallery.

SIR JAMES FERGUSSON, BART. OF KILKERRAN, LORD KILKERRAN (1688-1759), was the eldest son of Sir John Fergusson, first Baronet of Kilkerran. He was called to the bar in 1711, and succeeded his father in 1729. For a short period he represented Sutherland in Parliament, and on 7th November, 1735, he became a judge. Fourteen years later he became a Lord of Justiciary. He died on 20th January, 1759. Lord Woodhouselee said of him that "the probity and integrity of his character entitled him to respect and veneration." He was the author of a digest of Court of Session decisions for the period from 1733-1752. A picture of this judge remains in the private collection at Kilkerran.

### (4) THE COUNSEL FOR THE PROSECUTION.

WILLIAM GRANT OF PRESTONGRANGE, THE LORD ADVOCATE, afterwards Lord Prestongrange, was born in one of the first years of the eighteenth century. He was admitted as an advocate in February, 1722. In 1731 he became legal adviser to the Church of Scotland and principal clerk to its General Assembly. In 1737 he became Solicitor-General, and Lord Advocate in 1746. He sat in Parliament for the Elgin Burghs. To him as Lord Advocate fell the duties of assisting in drafting the Acts of Parliament and superintending the criminal proceedings necessitated by the late Rebellion, and it is universally admitted that, in the main, he discharged those heavy duties with great clemency and discretion. Of him Tytler says ("Memoirs of Lord Kames")—"There was in him a rectitude of moral feeling and a principle of virtuous integrity which regulated the whole of his conduct, and these, accompanied with a candour of judgment, a liberality of sentiment, and a winning gentleness of manner, were the pure offspring of a warm and benevolent heart. These qualities shone conspicuously in his discharge of the office of King's Advocate, which he held for six years, soon after the Rebellion (1745-6). In that situation his conduct in the adjustment of the claims on the forfeited estates merited universal approbation. It was regulated by a principle of equity tempering the strictness of the law, and indicated a mind superior to all the illiberal prejudices that are the offspring of party spirit." In the "Ochtertyre Papers" the following reference occurs:—"By a happy mixture of spirit, steadiness, candour, and caution, he discharged the duties of his high office at a very stormy period, with less obloquy and ill-will than could have been expected." In July, 1754, he became a Lord of Session, a Lord of Justiciary, and a Commissioner on the annexed estates. He died at Bath on 23rd May, 1764, and was buried in the family vault at Prestonpans. Sir Robert Dundas, Bart. of Arniston, is the owner of a portrait of this famous Scotsman.

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**JAMES ERSKINE** (1722-1796), Sheriff of Perth, afterwards Lord Barjarg, was a son of Lord Justice-Clerk Erskine of Tinwald (q.v.), was admitted to the bar in 1748, and became first Sheriff of Perth in 1748. In 1754 he became a Baron of Exchequer, and in 1758 Knight Marshal of Scotland. He took his seat on the bench as Lord Barjarg on 18th June, 1761, but afterwards took the title of Lord Alva. He died on 13th May, 1796. Mr. Erskine's only part in the trial of James Stewart seems to have been his speech on the relevancy. He had to leave the Court, for family reasons, before the hearing of witnesses was begun. Sheriff Erskine Murray possesses a portrait of this judge.

**ROBERT CAMPBELL OF ASHNISH** was brought up, Douglas says, under the particular tuition of the Duke of Argyll, and enjoyed his confidence and friendship throughout his life.

**JOHN CAMPBELL OF LEVENSIDE** (afterwards Lord Stonefield) was a son of Archibald Campbell of Stonefield, the Sheriff of Argyll, whose name occurs in the text of this book. He was called to the bar in 1748, and after spending fourteen years in practice, became a civil judge, and he occupied the bench for the long period of thirty-nine years, dying in Edinburgh on 19th June, 1801. From 1787 till 1792 he was also a Lord of Justiciary. In this capacity he was one of the judges who tried the notorious Deacon Brodie. He married Lady Grace Stuart, fourth daughter of the second Earl of Bute. Their son, Colonel John Campbell, commanded the 2nd Battalion of the 42nd Regiment in India, and defended the Mangalore Fort against Tippoo Sultan and a French force till peace was declared. The colonel died before his services could be recognised, but a baronetcy was promptly offered to his father. Lord Stonefield was one of the celebrities depicted by Mr. Kay (Plate xxiv., vol. 11).

**SIMON FRASER, MASTER OF LOVAT**, who was born on 19th October, 1726, was a son of the notorious Simon Lord Lovat. He was educated at St. Andrews University, and afterwards took part in the Rebellion as leader of the Clan Fraser. Mr. Alexander Mackenzie, the historian of the Frasers, states that the Master was present at Culloden. Different opinions have been held as to his personal sentiments at this stormy period, but some statements in the report of his father's trial seem to show that he was not a whole-hearted Jacobite, but an indifferent youth, who was forced by his crafty father into a dangerous course. William Walker, a servant of Simon's, narrated how the Master, during an argument with his father, "took off his bonnet and threw it upon the floor, and damned the cockade." Another witness stated that from what the Master had told him, he formed the opinion that the young man, if he had been left to himself, would not have had any concern in the Rebellion. These statements must, however, be received with caution, as there can be no doubt that determined efforts were made from first to last to secure the ultimate reinstatement of Simon as laird of Lovat. On 4th June, 1746, a special Act of Parliament was passed authorising the arrest of the leading Jacobites, including the Master. On the 2nd August he gave himself up. He remained in Edinburgh Castle till 15th August, 1747, with a charge of high treason hanging over him. He was then released, and he took up residence in Glasgow. A full pardon was granted him in 1750, though his lands were taken

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over by the Crown. On 25th July, 1750, he was called to the bar. After a brief legal career he entered the army, and in 1757 he raised among his clansmen a regiment for the Royal service, and became its Lieutenant-Colonel. The regiment landed in Nova Scotia the same year, and he fought at Louisburg under General Wolfe. He was present at both battles of Quebec, and at the later he commanded on the left. In 1761, while he was still abroad, he became member of Parliament for Inverness-shire, but in the following year he again saw active military service, this time in Portugal, and soon became a Major-General. In 1774 the Lovat estates were restored to him, and in 1775 he raised other two battalions for the King's service. The Highland Society of London was founded by him in 1778. On 17th June, 1782, he seconded in the House of Commons the motion for the repeal of the Act prohibiting the use of the Highland dress. He married an English lady, but left no issue. When he died in London, on 8th February, 1782, he held the military rank of Lieutenant-General in the Army, and Colonel of the 71st Regiment of Foot. The remark of Mrs. Grant of Laggan, that "he differed from his father only as a chained-up fox does from one at liberty," is probably only too true, so far as his earlier manhood is concerned, but in his military and parliamentary life he displayed no little nobility of character. The unfavourable presentation of Simon Fraser's character contained in "Catriona" caused (and not without reason) some irritation among Highlanders. The late Mr. Fraser-Mackintosh dealt with the matter fully in a speech delivered at the annual dinner of the Gaelic Society of Inverness on 16th January, 1894 (see vol. xix. of that Society's Transactions, p. 145).

### (5) THE COUNSEL FOR THE DEFENCE.

THOMAS MILLER (1717-1789), Sheriff of Kirkcudbright (afterwards Lord Advocate, Lord Justice-Clerk, and Lord President of the Court of Session), was educated at Glasgow University, called in 1742, became Sheriff of Kirkcudbright in 1748, and held that office till 1755, when he became Solicitor to the Excise. In 1759 he became Solicitor-General for Scotland and Lord Advocate in the following year. He sat in Parliament as member for the Dumfries Burghs. He combined with his already numerous public duties those of Town-clerk of Glasgow. Mr. Ramsay says, "By the interest of Provost Cochran, his first lady's grandfather, one of the ablest men Glasgow ever produced, Mr. Miller was made Town-clerk of that city, a lucrative office, which he held till appointed Lord Justice-Clerk" ("Ochertyre Papers," p. 349). He first took the title of Lord Barskimming. For twenty-two years from 1766 he was Lord Justice-Clerk, and in 1788 he became Lord President. Soon thereafter he was made a baronet, but his health was already failing. He died at Barskimming, Ayrshire, on 27th September, 1789. Several of his letters to Baron Mure are printed in "The Caldwell Papers," 1854. The trustees of the late A. W. Miller possess his portrait by Sir Joshua Reynolds, which formerly hung in the Scottish National Portrait Gallery. That collection still contains a Tassie medallion of the judge. Mr. Ramsay says of him that he "was one of the first in our time who rose to the highest dignities by professional merit, without parliamentary interest, or being pushed on by some ruling statesman. And it is no less to his honour that he passed through life with an unsullied

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reputation, almost without having an enemy." It was of him, in his retirement to Ayrshire, that Burns spoke in "The Vision"—

"Through many a wild, romantic grove,  
Near many a hermit-fancied cove  
(Fit haunts for Friendship or for Love  
In musing mood),  
An aged judge—I saw him rove  
Dispensing good."

GEORGE BROWN of Coalston, Sheriff of Forfar (afterwards Lord Coalston), was a son of Sir George Brown of Coalston, was called to the bar in 1734, and in 1748 became Sheriff of Forfar. Eight years later he took his seat on the bench, and became a Lord of Justiciary in 1765. He died at Coalston on 6th November, 1776.

ROBERT MACINTOSH, son of the Rev. Lauchlan Macintosh, minister at Dunning, and afterwards at Errol, was "called" in 1748. The "Ochertyre Papers" describe him thus—"Giving Mr. Macintosh all credit for his sobriety of manner and ambition to excel, it was a great loss to him that in his earlier years he had not kept company with males and females superior to himself both in rank and parts. By conversing chiefly with secondary men, who regarded him as a genius, he was filled with conceit. His law papers were prolific, and dry without elegance or pathos. From the proper circle of his brethren he was either excluded or kept aloof." In 1765 or 1766 he bought the estate of Auchintully, in Perthshire, and not long after became a parliamentary candidate for the Burgh of Perth. He was defeated, and raised a prosecution against the Opposition for bribery and corruption, but was again unsuccessful. He next came before the public as adviser to the famous York Buildings Company, and is credited with instigating many of its useless litigations. He afterwards came back to the Scotch bar, and, after a period of successful practice, he fell foul of the judges, and bade farewell to the Edinburgh Courts in a most violent speech, which caused the authorities to decide to prosecute him. He, however, put himself beyond the region of their jurisdiction in time to save himself from their indignation. Mr. Ramsay continues in these terms—"In a word, Mr. Macintosh, with talents to have been useful and respectable, seems to have fallen a victim to ambition and litigiousness. But he was always regarded as a man of good morals and a sincere Christian."

WALTER STEWART, younger of Stewarthall, was admitted to the bar in 1749. His career there was honourable but short. He died in London in 1764. Mr. Ramsay says, "No man stood higher in the estimation of the Court and of the bar, as well as a man of business, than this gentleman, when, to the unspeakable grief of his family and friends, he was cut off by a fever." His fatal illness was brought on by his travelling to London when he was unwell.

### (6) OTHER PERSONS.

CAMPBELL, ALEXANDER, son of John Campbell of Barcaldine, and nephew of Glenure, was born about 1729. While yet a lad, he joined the Argyllshire Militia as a volunteer and served during the rising of 1745 and 1746. He then became captain of one of

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the companies sent to India in 1748. In 1757 he became a major in Montgomery's Highlanders, two years later he became a lieutenant-colonel, and a full colonel in 1777. On 1st August, 1765, he married Helen, sister of the Right Hon. Sir John Sinclair of Ulbster, M.P. He never succeeded to his father's estates, and on 22nd April, 1779, he died at Bath.

CAMPBELL, DUNCAN, of Barcaldine and Glenure, fifth son of Patrick Campbell of Barcaldine, was born about the year 1716. He married in 1744 Mary, daughter of Alexander Macpherson, and sister of Sir James Macpherson, Bart. He was Sheriff-Substitute of Perthshire at Killin. He had six sons, five of whom served in the army, and one daughter, Lucy, who married Sir Ewen Cameron, Bart., of Fassifern. He died in 1784, having purchased the estate from his half-brother John (q.v.).

CAMPBELL, JOHN, of Barcaldine (born about 1700), was a captain in the Argyll Militia and a Deputy-Lieutenant of the county. He was the eldest son of Patrick Campbell of Barcaldine and Agnes Campbell of Kilmun. Like his brother, the ill-fated Glenure, he was a factor on certain of the forfeited estates. He became deeply involved in debt, and sold the estate to his half-brother Duncan (q.v.). His death took place on 12th April, 1777.

CAMPBELL, MUNGO, was an illegitimate son of John Campbell of Barcaldine. He was trained as a lawyer, but after 17th June, 1752, he devoted his energies to the work of factoring the forfeited estates previously administered by Glenure. In 1757 he asked the Barons of Exchequer if they objected to his acting as Sheriff-Substitute, and was informed that they agreed. In the following year he announced that he had accepted a commission in the army. Mr. Henry Butters was nominated as his successor, and on 5th January, 1759, Mr. Campbell was freed from his duties in the Highlands. His subsequent military promotion was speedy, and as Lieutenant-Colonel he was killed in action at Fort-Montgomerie.

DRUMMOND, JAMES MOHR, whom Mr. Andrew Lang very properly describes as "a valiant, plausible, conscienceless, heartless liar," was a blustering villain, with enough knowledge of the ways of honourable men to enable him at times to screen his true character by acting a part. He was a son of the famous Rob Roy. He intrigued with both sides before the Rising in 1745. He was wounded at Prestonpans, but he recovered, and in 1750 he was able to assist his brother, Robin Oig, in abducting the heiress of Edenbelly. He was found guilty. On 16th November, 1752, he succeeded in escaping from the Tolbooth, and early in the following year he appears in France. By various ruses, including some offers to entrap Allan Breck, he tried to ingratiate himself with the British authorities, but his cunning did not bring him even a moderate degree of comfort; and Sir Walter Scott records a threat by Allan Breck to murder him in return for his schemes of capture. He died in 1754 in great poverty in France. (For a most interesting account of his life, see Mr. Lang's "Pickle the Spy," pp. 230-251; see also the Introduction to Sir Walter Scott's "Rob Roy"; article in *Scotsman*, 15th March, 1895; *Blackwood's Magazine*, December, 1817; John Murray Rose's "Trial of Rob Roy's Sons," 1818; and *Macmillan's Magazine*, May, 1890.)

## James Stewart.

**ERSKINE, CHARLES, THE LORD JUSTICE-CLERK (1680-1768)**, is said to have been educated originally for the Church, but in 1700 he was appointed a Regent in the University of Edinburgh. He held this post till 1707, when he became the first Professor of Public Law in Edinburgh University. In 1711 he was admitted to the bar; on 29th May, 1729, he became Solicitor-General for Scotland; in 1737 Lord Advocate in succession to Duncan Forbes of Culloden; on 23rd November, 1744, he took his seat on the bench as Lord Tinwald; and on 15th June he became Lord Justice-Clerk.

**ERSKINE, DAVID, LORD DUN (1670-1758)**, studied in St. Andrews and Paris, represented Forfarshire in Parliament, and opposed the Union. He reached the bench in 1710. He was a judge with marked Jacobite sympathies. Mr. Ramsay in the "Ochtertyre Papers," p. 84, says, "He was likewise overrun with prejudice, which sometimes warps the judgment of able, well-intentioned men; but for that we should be at a loss to account for his Toryism, which approached very near to Jacobitism." Yet he was the author of a little book called "Lord Dun's Friendly and Familiar Advices Adapted to the Various Stations and Conditions of Life," 12 mo, Edinburgh, 1754. For a number of years Lord Dun hardly ever voted on the side of the Crown, even when the decision was well nigh unanimous. In 1754 he quitted the bench entirely, and without asking a pension.

**HAINING, LORD**, was a judge who did not earn fame or respect by his attainments. The outspoken Mr. Ramsay says of him that he was a man "who, with a slight knowledge of the law, had been made a judge by the interest of potent friends" ("Ochtertyre Papers," p. 323).

**KENNEDY, THOMAS, OF DUNURE, BARON KENNEDY**, was a son of a Lord Provost of Edinburgh, Sir Thomas Kennedy. He qualified as a lawyer in 1698, and succeeded Sir David Dalrymple as Lord Advocate, but was soon after replaced by that gentleman. He was highly esteemed, and it is recorded that his house was the rendezvous of the learned and polite ("Ochtertyre Papers").

"**LADY ARDSHIEL**" was a Haldane of Lanrick. Her Christian name was Isobel. After her husband's escape to the Continent she remained for a time in Scotland. A claim was made on behalf of her son for possession of the forfeited estates, but it proved unsuccessful. Her period of adversity was exceptionally trying. During the flight after the burning of Ardsheel House, she gave birth in a mean hut to a child, and was compelled the next night to continue her flight through the snow. In the year 1762 she seems to have been in straitened circumstances (see "Caldwell Papers," vol. i., letters 57 and 63). Her brother joined the Appin Stewarts as a volunteer during the '45, and was killed in action. She died on 8th April, 1782, in the sixty-ninth year of her age, and was buried in Northampton at the Church of All Saints. Her tomb bears a long Latin epitaph, ending with the following cheering behest:—

"Infestis igitur Viator  
Ne minium trepida  
Vincat iter durum Pietas."

**SERGEANT MOR.** Interesting accounts of this picturesque outlaw are given in the Notes to General Stewart's "Sketches of the Highlanders" and other publications. His real name was John Dhu Cameron. He served in the French Army, but fought

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with the Jacobites in the Rebellion of 1745, and was outlawed in consequence, doubtless because he omitted to take the necessary steps for securing a pardon. He organised a band of outlaws, and became the Robin Hood of the Western Highlands. Among his friends he was respected and even admired, but he plundered his enemies in the manner of the bandit of romance. The story goes that on one occasion the sergeant foregathered with an officer who was going to Fort-William with a consignment of gold, and who had lost his way. The sergeant's identity was not suspected, and his services as a guide were readily accepted. Then the conversation veered round to the sergeant's own deeds. The officer denounced the outlaw as a murderer. The charge was denied, and not without some cause, for the only time when a man's life was lost in connection with his raids was at Braemar, where a man was killed in a scrimmage, to the grief of the sergeant, who in consequence abandoned the spoil. "What had you to do with the affair?" asked the officer. "I am Sergeant Mör," was the reply. "This is the road to Inverlochy. You cannot more mistake it. You and your money are safe. Tell your governor in future to send a more wary messenger with his gold. Tell him also that, though an outlaw and forced to live on the public, I am a soldier as well as himself, and would despise taking his gold from a defenceless man who confided in me." Sometime after this event Cameron was betrayed by a farmer at Dunan, in Rannoch, and taken prisoner by Lieutenant Munro and a party of soldiers. He was lodged in prison, and identified by a soldier. His trial for the Braemar murder and numerous minor offences took place at Perth, and he was sentenced to death. In those days the "doomster" used to place his hands on a condemned man's head to exhibit his claim to his person. On this occasion, however, that official took alarm, and did not go through his ceremonial. The sergeant was executed on 23rd November, 1753, and his body was hanged in chains.

STEWART, ALEXANDER, fourth of Ballachulish, was born in 1681. He fought at Sheriffmuir and at Culloden, and died in 1774. His second son was killed at Culloden.

STEWART, ALEXANDER, eighth of Invernahyle, was a friend of Sir Walter Scott, who visited him at Invernahyle in 1786 or 1787. Sir Walter speaks of him thus—" . . . Alexander Stewart of Invernahyle, a name which I cannot write without the warmest recollections of gratitude to the friend of my childhood, who first introduced me to the Highlands, their traditions, and their manners. He was a noble specimen of the old Highlander—gallant, courteous, and brave even to chivalry." He said in his evidence at his trial that he was then forty-four years of age, so he must have been born about the year 1708. If this is correct he must have been only seven years of age in 1715, when he is said to have taken part in the Rebellion, but he was certainly "out" in the '45, and at Prestonpans he saved the life of Colonel Whiteford, who shows his gratitude by assisting him in getting a pardon after the Rebellion. He was in Edinburgh in 1779, when Paul Jones threatened to land near the city, and of him Lockhart says "that he was the only person who seemed to have retained the possession of his cool senses." He volunteered to organise a band of Highlanders to deal with the sailor. He married Catherine, daughter of Robert Stewart, ninth of Appin and had fifteen children. He died in 1795.

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STEWART, CHARLES, fifth of Ardshiel, was a famous swordsman. He fought with Rob Roy on one occasion, and wounded him. The famous freebooter declared it was the first time his blood had been drawn. Nothing is known about Ardshiel's life prior to 1730, but he was one of the Prince's correspondents prior to the Rising of 1745, and when the war began he joined the Pretender at Low Bridge at the head of the Clan Stewart of Appin, which was 360 strong at Prestonpans. This number included, no doubt, men of other clans and of no clan, who chose to fight under the Appin Stewart leader. At Culloden 92 of his followers were killed and 65 were wounded. Ardshiel then endeavoured to raise the Western clans and renew the fighting, but he was unable to collect an effective following. After many adventures he visited Appin in order to see his family before escaping to France. In a cave near the mansion-house he lay concealed, and it still bears his name. In December, 1746, the house was burned down by the King's men. He died at Sens on 15th May, 1757. One of his companions in flight prior to escape from Scotland was Allan Breck Stewart.

STEWART, CHARLES, Writer and Notary at Banavie (born in 1714), who had acted as the agent of James Stewart before the death of Glenure, was probably the man who also acted as agent for Fassifern. Mr. Macfarlane, W.S., Edinburgh (to whom James "papered" Allan Breck), also seems to have been agent for both gentlemen. In connection with Stewart's arrest and trial Charles Stewart showed wonderfully little spirit. It is true that, if he was also Fassifern's agent, he was himself a suspect in connection with some very questionable transaction of a different nature, and that he may have feared the indirect consequences of taking a side in the Appin matter. For some notes on Fassifern's agent's experience after this time see Mr. Andrew Lang's "Companions of Pickle," pp. 166-171. It is very probable that he may have been also the "Charles Stewart, notary publick in Maryburgh," who acted during the Rebellion as "the Pretender's son's secretary's clerk," and whose signature to receipts has led unsuspicious persons to believe that they possess the writing of the Bonnie Prince himself.

STEWART, DUGALD, tenth of Appin, was a child in 1745. He married May Mackenzie, and had no son. In 1765 he sold the estate of Appin, and thereafter the leadership of the Stewarts devolved on the Ardshiel family.

STEWART, JAMES, eighth of Fasnacloich, described in the evidence as "younger of Fasnacloich," was born on 17th July, 1723. He was wounded at Culloden. It is clear from the evidence at the trial that he was a close friend of Allan Breck Stewart.

STEWART, JOHN, fifth of Ballachulish (described in the record of the trial as "younger of Ballachulish"), was the elder son of Alexander Stewart, fourth of Ballachulish (*q.v.*). He survived till 1794, and left one daughter, Lillias, who succeeded him in the estates, and married Dugald Stuart, a captain in the 71st Regiment.

STEWART, JOHN, seventh of Fasnacloich, married Une (Winifred), daughter of Macdonald of Glencoe. They had at least three children, two sons and a daughter.\*

\* The facts above stated with regard to the various Stewarts are mainly taken from a volume by Mr. John H. J. Stewart and Lieut.-Colonel Duncan Stewart, printed by MacLachlan & Stewart, Edinburgh, in 1890. It gives a most interesting account of the clan and its leading families.

# Appendix VII.

## APPENDIX VII.

### BIBLIOGRAPHY.

**THE TRIAL OF JAMES STEWART** an Acharn in Duror of Appin for the Murder of COLIN CAMPBELL of Glenure, Esq., Factor for His Majesty on the Forfeited Estate of Ardsheil; BEFORE THE Circuit Court of Justiciary held at Inveraray on Thursday the 21st, Friday the 22d, Saturday the 23rd and Monday the 25th of September last; by his Grace the Duke of Argyll, Lord Justice-General, and the Lords Elchies and Kirkcaldy, Commissioners of Justiciary. Edinburgh Printed for G. H. MILTON and J. BALFOUR 1753.

(The sale price was five shillings. See *Scots Mag.*, February, 1753.)

A SUPPLEMENT TO the Trial of JAMES STEWART \* containing Papers omitted by the publishers of the Trial; Observations on the Trial, with Anecdotes relating thereto; James Stewart's dying Speech, and a few Particulars respecting his behaviour. By a By-stander. *Erectus ad honestum Cadere potest, cadere non potest*. LONDON, 1753. Printed for the Benefit of a poor Widow, and her five children. Price One Shilling. Proper to be bound up with the Trial. N.B.—This pamphlet is complete without the TRIAL.

Contemporary accounts of the events in Appin appeared in several periodicals, including the following:—

*The Scots Magazine*, 1752, No.

*The Scots Magazine*, 1753, which the Speeches and Evidence were reprinted in *scattered* out the whole year. The opening section is prefaced thus: "It has been very much the subject of conversation that has occurred of a long time, especially before the Court."

*The Gentleman's Magazine*

*Edinburgh Courant*, 1753

*Caledonian Mercury*, 1753

The merits of the case have been discussed in the following books:—

"The State Trials," Vol. xix. (This book contains a complete reprint of the evidence, &c.)

"Celebrated Criminal Trials in Scotland," by Hugo Arnot (1536-1784).

"Collection and Abridgement of Celebrated Narratives from Criminal Trials in Scotland" (2 Vols.), by J. Hill Burton, D.C.L., LL.D.

"Transactions of the Gaelic Society of Inverness," Vol. xvi. (1889-90), p. 276, "An interesting Copy of a Report of the Trial of James Stewart of Acharn," by J. R. N. Macphail, M.A., Advocate; and Vol. xxiv. (1899-1901), p. 140, "Further Notes on the Trial of James of the Glens," by J. R. N. Macphail, M.A., Advocate.

"The Bighouse Papers," Edited by Captain Douglas Wimberley.

\* See Appendix, p. 331.

## James Stewart.

"Historic Mysteries," by Andrew Lang; and in the following magazines and periodicals :—

*Chambers's Journal* for February, 1903. (Mr. Marriott Watson.) (See also do. for September, 1903.)

*The Scots Magazine* (February, 1899), Vol. xxiii., No. 135.

*Guth na Bhliadna*, Am Foghar, 1905. Article — "Seumas a Ghlinne."

*The Scottish People*, Article by the late D. Antonio, Clerk of the Bills.

*The Oban Times*, on several occasions.

It is also mentioned incidentally in many books and periodicals, including the following :—

"Sketches of the Highlanders," Major-General David Stewart of Garth. (See also reply of "Amicus" to "The Sketches.")

"The Stewarts of Appin," by John H. J. Stewart and Lieut.-Col. Duncan Stewart.

"Circuit Journeys," Lord Cockburn.

"Lord Advocates of Scotland" (1483-1832), by George William Thomson Omond.

"Odd Incidents of Olden Times, or Ancient Records of Inveraray," by Peter Macintyre.

"An outline of the History of Scotland," by W. M. Mackenzie, M.A., F.S.A.(Scot.). A. & C. Black. 1907.

"Journals of the Episcopal Visitations of the Right Reverend Robert Forbes, 1762-1770," Edited by the Rev. J. B. Craven, in 1886.

"Scotland, Historical and Romantic," Lansdale (Published in Philadelphia by Coates & Co.).

*Celtic Magazine* (Vol. ix.), Letter by "Nether Lochaber."

*Celtic Monthly*, Edited by John Mackay, 10 Bute Mansions, Glasgow.

*Scottish Review*, 13th September, 1906, with Illustrations by A. K. Brown, A.R.S.A.

Clan histories and local guide books.

**THE CASE IN FICTION.**—The Appin mystery has not been neglected by writers of fiction. In 1834 the Rev. George Robert Gleig, the author of "The Subaltern," published through Mr. Richard Bentley a three-volume novel entitled "Allan Breck." It does not seem to be unfair criticism to say that Mr. Gleig knew very little about the Appin tragedy and very little about Scottish home life in the eighteenth century. The novel has some of the qualities that attracted readers sixty years ago, but it is improbable that it would earn many praises if republished now.

Allan's next appearances in fiction were made in Robert Louis Stevenson's great novels, "Kidnapped" and "Catriona," where he becomes the companion of one David Balfour. Here he takes to himself some pleasing qualities which I fear he never possessed when incarnate, but his new personality is now fixed, and the reader of "The Adventures of David Balfour" who studies the foregoing pages will find it hard to abandon the Allan of the brig "Covenant" of Dysart, and to accommodate himself to the less lovable Allan who hovered round the House of Fear, and thereby he will pay the art of Stevenson one of the truest of compliments.

## Appendix VIII.

In recent years this story has again been useful to a novelist. In Neil Munro's "Doom Castle" one is brought into the Inveraray country at the time of James Stewart's trial. In this fine romance the author does not recount the full facts, but there are many picturesque passages that appeal strongly to readers whose imagination has already been quickened by the cruel fate of James of the Glen.

### APPENDIX VIII.

EXTRACTS FROM A VOLUME PUBLISHED IN LONDON EARLY IN 1753, ENTITLED "A SUPPLEMENT TO THE TRIAL OF JAMES STEWART." BY 'A BYSTANDER.'

The true state of the case, as to the taking up and detaining James Stewart in prison, is as follows.—Glenure having been murdered on the 14th of May, James Stewart and his eldest son Allan were made prisoners on the 16th in the afternoon, by a party of soldiers, and carried next day to Fort-William; where they were imprisoned, without any signed information against them, or warrant for so doing; though the law, as just now shewn, most expressly directs both. It is true, there appeared afterwards, viz., July 6, a warrant signed by the Lord Justice-Clerk, and dated at Edinburgh May 17. But as Edinburgh is three days journey, or 88 computed miles, from Fort-William, it can never be pretended, that the imprisonment could have been made in virtue of this warrant. From the 17th of May to the 21st of August, James Stewart was kept in close confinement (as to admittance to others to see him), excepting once, towards the end of June, when a letter of directions to his wife, with the foresaid act of parliament against wrongous imprisonment, were shewn to Colonel Crawford, the then commanding officer at Fort-William;

\* A full transcription of the title-page of this interesting little book will be found in the Bibliography, page 320. On account of its extreme length (83 pages) the text is not here republished in full. The writer, who was clearly a lawyer well grounded in polite learning and in his own profession, annotates the speeches and the evidence in an able manner, though his sympathy with James Stewart leads him into unusually harsh criticisms of the prosecution. He begins by supplying us with the text of four "Productions" which were omitted in the account of the Trial as originally printed. These are inserted in the present volume in their proper places. An interesting account of the prisoner's most unjust isolation during June and July is here reproduced in full. At page 18 the writer begins an ingenious argument in support of his theory that, as Allan Breck had not resided in Appin for forty days, the citation served for him at Acharn was invalid, and that the edictal citation at the Market Cross of Inveraray was also useless, as no edictal citation could be effectively executed unless the accused were summoned at the Market Cross of Edinburgh and pier and shore of Leith sixty days before the intended trial. As, however, the opinions of James's judges as to the relative position of principals and accessories were very definite, the actual establishment of the "Bystander's" plea would not have altered their view of their right to proceed forthwith to try the accessory. Our author then comments historically on Mr. Walter Stewart's memorable phrase "even an Arayle," and subjects the opening speeches of the Crown counsel to minute and hostile criticism. The averments of the witnesses, and especially those of the bouman, are also trenchantly examined, but it cannot be said that any points of vital novelty are raised. The most interesting passages in this Supplement, those with which it concludes, are herein reproduced in full.

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who thereupon allowed Mrs Stewart, and her two sisters, to see the prisoner; but refused admittance to every male friend, or person capable of advising and assisting him in bringing on his trial. At the same time the prisoner sent one to Barcaldine, Glenure's eldest brother, to demand a copy of the warrant for his imprisonment; and received for answer, that he might get it from the jailor of Fort-William. All this I have seen in a letter under James Stewart's hand, dated June 25.—Agreeable to the directions sent to Mrs Stewart, she required Charles Stewart notary at Banavie, first to show the act of parliament to Col. Crawford, and then demand, under protestation, a double of the warrant for committing her husband. But the timid notary declined the employment, and left the place. The cause of which behaviour in him may be discovered, by looking at his deposition; where he says, "That he had formerly declined to act (viz., at the ejection), because he did not care to disoblige Glenure." And if this was thought by him to be a good reason before for not acting, it was become a stronger one now; when not only James Stewart's friends were menaced, but the whole country put under terror. For Mr. Stewart younger of Ballachelish had asked from Barcaldine, at the house of Glenure, a copy of the warrant of commitment; and was not only refused it, but told by Barcaldine, that it was none of his (Mr Stewart's) business; and if he acted any further in this matter, he himself should be taken up and imprisoned likewise. This young gentleman, however, seeing himself the only person that had courage to speak or act for the prisoner, went to Maryburgh, adjoining to Fort-William, and from thence wrote a letter to Col. Crawford, earnestly begging, to be allowed to converse with the prisoner about express business, and in the presence and hearing of any officer the Colonel should be pleased to appoint. To this letter Mr Stewart received the following answer.—"Fort-William, 3 o'clock. Sir, Colonel Crawford desires me to acquaint you, that you are represented to him as a person entirely in the confidence and secrets of Allan Breck Stewart; and that the intercourse you are said to have held with the supposed murderer of Glenure, at the time immediately preceding the murder, makes it (in his opinion) improper for your being admitted either to the prisoners, or as a friend into the garrison.—The Colonel's illness he hopes will be an excuse for not writing himself. I am, Sir, your humble servant, (signed) THO. WELDON."

Now, without saying any thing in particular of this extraordinary letter of Adjutant Weldon, is it not evident, that the foresaid act of parliament, the only security of the liberty of our persons in North-Britain, was despised and disobeyed in a most illegal and arbitrary manner, by the governor of the fort, even after it had been put into his hands, as above mentioned, and was undoubtedly read by him? But this happened in the highlands of Scotland, at a place governed by military persons, and remote from help, check, and every other controul.—Soon thereafter Col. Crawford being removed from Fort-William, Mr Leighton took his place; to whom the prisoner's wife applied, desiring access to her husband. But this her legal privilege was not only denied her by the new governor, but she was told, that if she did not immediately depart from the town of Maryburgh, she would be put in prison herself. Thus this poor and almost distracted woman is driven from the place and neighbourhood of her husband's confinement, and obliged to leave him in a friendless and forlorn state. And some time after this, the same Mr Leighton having allowed James Stewart

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to write a letter to one of his acquaintances about necessities, James ventured, in a postscript, to complain to his friend of the closeness of his confinement, and other hardships put upon him. But the letter being carried to the governor, to be read by him before it was sent off, he went in a passion to the window of the prison, and there scolded James for daring to write such a postscript; and throwing the letter into the prison, assured James, that if he did not write his letter over again, and keep out the postscript, no letter should be allowed to go from him out of the garrison.

— *Pudet hæc opprobria volis,  
Et dici potuisse, et non potuisse refelli.*

At length, on the 6th of July, after a close confinement of fifty days, a double of the forementioned warrant from the Lord Justice-Clerk was delivered to the prisoner. And that it was on this day, and no sooner, can be instructed by a letter under the prisoner's hand, conveying this double to one of his friends. By this delay, and the hitherto close confinement of the prisoner, did the prosecutors secure a most consequential point; the putting it, to wit, out of the prisoner's power to bring on his trial in the justiciary-court at Edinburgh, by running his letters; where his agent would have daily access to him, and the assistance of lawyers could have easily been got, in order to his defence. Whereas, by the forementioned artful and unlawful methods, he did not see either agent or lawyer till at Inverary, within two days of the trial; unless it was at Tyndrom, where, in the road from Fort-William to Inverary, he accidentally met with his agent, and conversed with him for about an hour, as shall afterwards be more particularly taken notice of. Still the prosecutors had it in their power to have given him notice of his trial, and time for his agent and lawyers to prepare for it, by bringing it on in the way of presentment, or what is commonly called the porteous-roll. But they were not so disposed, being determined at any rate to have the trial at Inverary; though contrary to the opinion of some, that on all other occasions used to direct the conduct of the chiefest person among the private prosecutors. The reason will readily occur to the reader, on considering, who was to be tried, at what place, and by what jury.

After all, criminal letters were raised, and printed at Edinburgh. James Stewart's agent being informed of it, earnestly begged a copy of the libel, which, he said, was a favour that no person of the least humanity could refuse, considering how short a time it now was to the sitting of the court; and that if no copy of the indictment was given him, and advantage was to be taken of executing it at Fort-William, three of the fifteen days allowed by the law must be elapsed, before it could be transmitted from the prisoner at Fort-William to his agent at Edinburgh: so no sufficient time would be left him for finding lawyers of character and experience, and making the other necessary preparations; as most of the noted counsel in Edinburgh had been industriously taken up by the private prosecutors long before; and it being vacation-time, the rest of them were gone into the country, or engaged to attend the other circuit-courts. Add to these reasons, the time it would require to write out copies of the libel for the several lawyers that might be prevailed upon to appear as counsel for the pannel, in order to their considering it duly before they should meet at Inverary; otherwise it might look liker a going there to witness the form of a trial, than to be of any service to the pannel; which they could not be, unless timely prepared for it. Yet,

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strange to tell! even this small, and usual favour, a copy, to wit, of the printed libel, was absolutely refused by the agent for the prosecutors; who always showed (to his praise be it said) the greatest diligence in carrying on this good work. Nay, a person of great distinction was threatened with a complaint against him if he, in compassion, to which he was much inclined, should give or order a copy for the pannel's agent. A copy however, was procured, by mere accident. It happened thus.—Such care was taken by the private prosecutors at Mr Fleming's printing-house, while the libel was in the press, that one for them stood by all the time; and so soon as it was finished, the types were broke down, or discomposed, and all the copies carried away. It happened providentially, as was then thought, that the proof-copy, which had been thrown into a corner, was picked up by a curious stranger, who most kindly carried it to the pannel's agent; who caused reprint it immediately. This coming to the knowledge of the private prosecutors, complaint thereof was made to the magistrates of Edinburgh: the foresaid stranger was called before them, in order to be prosecuted, and the servants of the printing-house were threatened with punishment. But a certain gentleman, of more prudence as well as interest, hearing of this intended process, advised it to be dropt:—In this by-way, then, the pannel's agent being furnished with a copy of the libel, and observing in it some extraordinary articles, especially the general one relating to threatenings, was put into a most alarming hurry, to prepare for the defence of his client. He had expresses to send to different lawyers in distant places, and rode about himself night and day, to try and persuade two able counsel at least to undertake the office. Of the men of greatest note most were pre-engaged by the agents of the other side; some were afraid of the rainy weather, and the length of the journey; others of resentment from a certain quarter; and many refused altogether. In this perplexing state, the pannel's agent, almost ready to give up the cause of his poor client, went to one of the first counsel against him; and declared, that he was to advise the pannel to throw himself upon the court, and to plead his own cause in the best way he could; seeing no lawyers of weight could be found to speak for him. But this, he was told, would be a desperate course, and was advised by no means to take it. At last, four very sufficient lawyers (two elder, two younger) were prevailed upon to go to Inverary. And the agent having succeeded so far, resolved next to go to the pannel at Fort-William, in order to learn from himself what he had to say in his own defence. But being informed, in a direct manner, that not only the pannel himself was kept in illegal close confinement, but that likewise his two sons, his two servants the Maccolls, and others in the list of witnesses against him, were all confined in the same illegal way in the prison of Fort-William; and particularly, that the said two Maccolls had been kept there in shackles, or handcuffs, for the space of three months, and a third Maccoll (the bouman) shackled in the same way some shorter time;\* he, the agent, judged it proper to ask an order from the Lord Justice-Clerk to the keepers of the prison where these witnesses were detained, to give access to the agent, to see, and inform these prisoners (in the presence of the officers of the garrison, or of any of the justices of the peace or minister of the gospel he

\* Footnote in original copy of the Supplement—Does not this new and unprecedented way of using witnesses deserve the name of torture? Scandalous and horrid in a free country!

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might find there), not to be terrified by the cruel and illegal treatment they had met with, and to swear nothing but what was true. With this view Mr Stewart, the pannel's agent, gave in the following petition:—

“Unto the Right Honourable the Lord Justice-Clerk.

The PETITION of James Stewart in Aucharn, Allan and Charles Stewart his sons, Dougal and John Maccolls his servants, Alexander Stewart packman in Appin, John Maccoll bouman to Appin in Koalisnacuan, and John Carmichael miller in Kinlochleven, all prisoners in Fort-William, or transported from that to Inverary,

Humbly sheweth,

That your petitioners were in May last apprehended, and incarcerated in Fort-William, upon suspicion of being art and part in the murder of Colin Campbell of Glenure, deceased; and have been close confined, and no admittance allowed to them, since they were incarcerated, though frequently required; notwithstanding the act of parliament, in the year 1700, anent wrongous imprisonment, prohibits and discharges close confinement of any prisoners after eight days from the time of commitment.

May it therefore please your Lordship, to grant warrant and ordain the Governor of Fort-William, and all others keepers of prisons where your petitioners are, or may be sent, to give free access and admittance to all persons who shall desire to see and converse with your petitioners, for their defence, or any other lawful affairs.

According to justice, &c.,

A. STEWART, doer for the petitioners.”

On this petition the following deliverance was given.

“The Lord Justice-Clerk having considered the above petition, and having interrogated Mr Stewart who signs the same, Whether he had instructions from all or any of the prisoners in whose name the petition is offered, to complain of their being confined otherwise than agreeably to the directions of the act of parliament anent wrongous imprisonment? and having answered, That he had written instructions from James Stewart, one of the petitioners, to set forth as above, but no direct order from the other persons themselves; grants warrant to, and requires the keepers of the prison at Fort-William and recommends to the commanding officer, to give access to the friends and lawyers, at all proper and convenient times, to see and converse with the said James Stewart, in order to prepare for his defence; a criminal libel having issued against him, in order to his trial at the circuit-court to be held at Inverary; but refuses to interpose as to those who have given no express direction to complain of the keepers of the prison where they are said to be confined, or to give any orders as to keepers of prisons, who are not accused as having done any thing contrary to the duty of their office. Given at Edinburgh the 20th of August 1752.

(Signed) CH. ARESKINE.”

\* Footnote to Supplement—Mr. Stewart offered to give oath upon it, that he was properly instructed to make this application, but did not chuse to show his letter of instructions, it containing things not yet proper to be known.

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And here let it be remarked, as an occurrence in these proceedings, not the least extraordinary, that a British subject was obliged to sue as a favour from a judge, for what he had a right to by his birth. But it was still more extraordinary, that that favour was refused in some parts, and scarce granted in any. The great officer of justice who was applied to, expressly refuses to interpose as to some, viz., those who have given no directions, though he owns they are said to be confined, (and whose confinement prevented them from giving directions); and refuses to give any orders to jailors who are not accused of having done any thing contrary to the duty of their office; as if the very application to him did not import a breach of their duty in the grossest manner, in defiance of law, nay, of a law the most sacred barrier of the rights of the subject. This is what he refuses: let us see what he grants. He grants an order to the jailor, and he recommends to the commanding officer of Fort-William, to give free access to James Stewart, one of the prisoners, a criminal libel having issued against him, as if that circumstance was the reason of the admission. The words of the act are free, as the natural rights of mankind, from which it was derived, and which it was calculated to ascertain. It is an inhumane restraint on the most valuable of human blessings, liberty, that that law meant to ward off; and all that are imprisoned are equally intitled to its protection. It is not to the pannel, nor to the witness, but to the prisoner, under whatever denomination, that it extends its relief. And surely, if any distinction had ever been intended, witnesses would have been the last to have been included in it; whose information is more necessary to the agent, than even that of the accused himself. But, restrained as this part of the order already appears, this is not all: for it was directed to the jailor of one particular prison only; a restriction of so much the more consequence, as it will appear the prisoner was removed from that prison before the agent could well reach it, nay and in consequence of a warrant sent from Edinburgh for that very purpose. As this affair will suggest sufficient matter of observation of itself, I shall make upon it but this short remark. That ignorance of the law cannot be pleaded in this case, as it was in that of the military jailors. Nor let these gentlemen take offence at this appellation; for since they submit to the drudgery (to say no worse) of the office, let them bear the dishonour of the name: for little is the difference between being exhorted by recommendations, or compelled by orders, to the exercise of the function, since exercise it they do. But to return from a digression, which its importance will, it is hoped, excuse:

The above deliverance was sent by express to Fort-William. The pannel was served with the criminal letters on the 21st of August, just nineteen days before the trial came on; and allowing four of these days for the troops to march with their prisoner from Fort-William to Inverary, and the three Sundays that intervened, there remained only twelve free, and now most precious days.\*

The pannel's agent having taken at Edinburgh what previous steps the shortness of the time allowed him to do, set out for Fort-William on the last day of August; and, on the 2nd of September, met accidentally with the pannel at Tyndrom, guarded by a party of soldiers, in their way from Fort-William to Inverary. He instantly applied to the commanding officer, and desired leave

\* This seeming mis-statement is accounted for by the differences of the "old" and the "new" styles of the calendar.

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to speak with the prisoner. This was at first refused him by the officer, because of his orders, and the confined warrant that was shown him by the agent: but at last, with great difficulty, he was allowed to converse with the prisoner for about an hour. The agent then found himself obliged to ride on, even into the country of Appin, that he might there search the pannel's papers, and be informed of facts, &c. But what was his surprise, when arriving at Aucharn, the pannel's dwelling-house, he found that his repositories had been opened and examined, three different times, and without any warrant, by near relations of the prosecutors, assisted by a military force; who carried away whatever papers they thought might suit their purpose. He thence travelled to Inverary, where he met with some of the pannel's lawyers on Monday night, the 7th of September O. S. or the 18th N. S. They were at first refused access to the pannel; but got it next day in the forenoon, when there remained but a day and a half to the pannel to inform his agent for the drawing a state of his case, and to his counsel for preparing their pleadings, and the proper interrogatories for the witnesses. This was a work that surely required a much longer time, as every person of the least experience in these matters will see; and for which the law has allotted fifteen days at least. But this poor pannel, by the arbitrary and illegal management of the private prosecutors, as above mentioned, was forced to stand trial, and to prepare for it in the utmost hurry;—much to the reproach of the laws of the land.

This interlocutor (ordaining the jury to inclose, &c.) having been pronounced by the three judges, the Lord Elchies said to the jury words to this purpose,—That as they had been much fatigued, by the extraordinary length of the trial; and as the case now to be left to them, was of the utmost consequence, no less than life or death, it deserved their most serious and deliberate consideration: and that therefore a long time (full twenty-seven hours) was given them to return their verdict. And his lordship added, that he thought it might be very proper for them to refresh themselves with sleep, before they should proceed to consider the case, and make out their verdict; for which, he said, couches, &c., should be ordered into the place where they were to be inclosed.—It would, doubtless, have been commendable in the jury, if they had complied with this seasonable advice of the Lord Elchies, considering that they had now been sitting in court about fifty hours without sleep; which as they wanted much, so after being refreshed with it, they might have deliberately and with their eyes open considered the case of the poor pannel. The jury, however, were pleased to refresh themselves only with wine and the like, and immediately thereafter to fall to their business, with the same drowsy noddles: in which they made such dispatch, as to have it dressed up and ended soon after eleven o'clock of the same forenoon; a time shorter than four hours at most.

— O horrid to relate!  
About man's life they did not hesitate.

In the afternoon of this day, Mr Stewart younger of Ballach-elish meeting Mr Campbell of Ederline, one of the fifteen, on the street of Inverary, told him, that every one was surprised at the dispatch the jury had made in examining so long a case; and asked Mr Campbell, How it was possible they could do so much in so short a time? To which Mr Campbell answered,—“We only

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considered the exculpatory proof; as for the other (viz. the proof against the pannel), we all had it in our heads before."—Few will doubt the truth of this answer. They had made up their minds before, as modern politicians phrase it. But to proceed:

On Monday the 25th, when the court met again, the jury gave in their verdict. In it they say, "and having considered the criminal letters, &c., the interlocutor of the judges thereupon, with the depositions of the witnesses for proving thereof, and depositions of the witnesses adduced for the pannel, together with the writings and other particulars contained in the inventory subjoined to the libel, and the writings produced for the pannel, find unanimously James Stewart guilty, art and part, of the murder of Colin Campbell of Glenure."—Now, let any one try to read over, in the hastiest manner he pleases, all these papers and depositions, which the verdict says they did consider, and he will find it a task (even now when printed) that requires a much longer time than four hours; I say, even to read them, but much more so to consider them with candour and deliberation. But above all,—where could flow the paradoxical unanimity of this verdict? From the clearness of the proof, say a few of those that have read the trial: from dependency, and the old leaven of clanship, say others, who are, it is to be owned, by far the greatest and most intelligent part of mankind. It is indeed currently reported, that three of the jurymen dissented in opinion from the rest; but if so, they had not the courage to desire their dissents to be marked, as perhaps availing not in Scotland, where a majority of the jury determines the question, Whether guilty or not?—But the hearts of honest men are the temples of truth, which no interest, no power, no persuasion can bias or change; much less make them join in turning innocence into guilt. And jurymen, we know, are bound by their oath, to see with their own eyes, and not through the optics of others. In charity, therefore, we are obliged to reject this story of the dissent, and to give no credit to the suspicion entertained by many of their having been influenced from a fear of offending. Zeal, it is true, in some, and fear in others work wonderfully on the minds of men; especially when their passions are up. It is observed too, that the people of the highlands follow the impressions which they receive from their leaders: and when the mind has taken a certain turn, it is difficult to give it any other; for it acts as mechanically as any of our other faculties. A wise man may be made to doubt, but a fool never.—Be this as it will, most seriously true it is, that the evening of this day was spent at Inverary in great jollity and mirth, on account of the victory obtained by their friends over a Stewart, and ended in a general ebriety.—From all which it is not to be wondered, that the *London Evening Post* of December 5 took notice of this trial in the following words. "We are informed by a private letter from Argyleshire, that the ancient animosity between the Stewarts and Campbells is likely to revive, on the score of hanging James Stewart at Ballachelish, on account of the murder of Colin Campbell of Glenure. The circumstances of trying James Stewart at Inverary, the seat of the D— of A—, is what his friends fix upon to convince the world that he was hastily and unjustly condemned."

The sentence of death was next pronounced; and thus success answered the design.

After which the L— J— G— spoke to the condemned pannel, in an angry style, as many of us by-standers then

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thought: and we affirm, that the speech spoke was much more acute and bitter than the speech printed. Yet, take it as it is in the trial, may it not be deemed a draught full of wormwood and gall offered to the thirsty? Original sin, it seemeth, is not to be pardoned without a sacrifice. This to many may appear a doctrine void of charity: but let them take notice that the speech concludes with a petition to the Lord, for mercy to the pannel's soul; which shows at least the serious orthodoxy of the Noble speaker's mind.—Now, to run over a little this most remarkable speech, I shall barely mention a few very observable words or parts of sentences used in it, and leave it to the reader to make the remarks.—“Most impartial trial—Moderation—Guilty according to the evidence—Sums of money—for your own purposes—Satiated with the blood of any name or clan to which you had an aversion—Nor am I permitted to call you a traitor—his Majesty did restore you to the state of an innocent man.”—In fine, it surprised me to hear the D— of A— call the country of Appin an uncivilised part of the highlands, when it is so well known (comparatively speaking) to be quite the reverse; as also to hear the poor pannel, now doomed to death, charged, in this awful and solemn speech, with a hear-say—Weaknesses in weak men are nature; but the foibles of men distinguished by their abilities, as they can hardly be concealed, may are sometimes revealed even by themselves; so they can never be forgiven.

And here let me leave it to the reader to consider, whether this speech, together with the whole tenor of these proceedings, does not furnish ground to apprehend, that the late acts of parliament for abolishing the spirit of clanship, may contribute in a great degree to confirm the evil they meant to destroy. For, by appointing circuit-courts to be held at Inverary in the country of Argyle, and under the very walls of the castle, where the majorities at least of juries must be composed of Campbells, his Grace, who, by his office of Justice-General, is intitled to preside at these courts, has thereby an opportunity of exerting that spirit of clanship in so much a stronger manner than before, as the authority of judge is added to the influence of chief. Every hint from the judge will be received by the jury as the commands of the chieftain. And if any case ever can happen where the judge can be biased, whether a rival clan or private resentment is in question (and no highlanders are without the one, and few men without the other), it will be vain to expect the jury impartial. In this case, of the jury eleven were Campbells; and what effects the hints from the bench had upon them, may be gathered from the observations of the judicious pannel, who knew too much of the nature of clanship, not to be certain of his fate, from the first check that was given his Advocates. If it shall be said, the loyalty of the clan Campbell is a sufficient security against such apprehensions, I shall beg leave to assert, that it was clanship in general that the legislature meant to destroy; for every degree of sovereign power in a subject is inconsistent with the good of the state, and it may be said, to its subversion. Nor has this very clan always had their hands free from the stain of rebellion against established government. That indeed was the government of another family. But neither do I see upon what is founded the mighty merit they boast of loyalty to the present. It is in the memory of every one among us, from how small a spark that flame of rebellion was kindled, which of late spread itself almost to the gates of London, and filled this land

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with calamities which it will long mourn! and consequently with what facility it might have been stifled in the birth! Where was this boasted loyalty, when it might have rendered such effectual service? The chief of the Campbells was then among them, in the neighbourhood of the place of descent, of which he was well and early apprised. And yet nothing was done by them to prevent its consequences. Whatever were the motives, such was the fact; which sufficiently justifies this conclusion, That they were far from exerting as much zeal for the preservation of the present establishment, as their adjoining clans did for its subversion. But to return:

Immediately after the Lord Justice-General's speech, the pannel said,—“My Lords, I tamely submit to my hard sentence. I forgive the jury, and the witnesses, who have sworn several things falsely against me; and I declare, before the great God, and this auditory, that I had no previous knowledge of the murder of Colin Campbell of Glenure; and am as innocent of it as a child unborn. I am not afraid to die; but what grieves me, is my character, that after ages should think me capable of such a horrid and barbarous murder.”—This laconic speech was delivered by the pannel, in so easy and sincere a manner, as to make a certain great man turn to the person that sat next him, and say—“My Lord, this man's behaviour, from first to last, is most surprising. I don't know what to make of it, it truly confounds me,” &c.

From this unhappy period, until the fatal day of execution, James Stewart behaved, in every respect, so like a good Christian, that his greatest enemies were forced to commend him. Nothing now afflicted him but the thoughts of leaving a most kind wife, with a pretty numerous family, not provided for; and a reasonable concern for his own character, because of the determined ignominious manner of his death, and the alleged cause given for it. To die, he said, on a gallows for having acted a part in an assassination, was, he believed, what few that knew him could ever have thought was to be his end. This he regretted at first to his friends who came to see him in his condemned state; but after being assured by the gentlemen who had been his counsel, that they had all kept notes of their pleadings, in order to the publishing his trial, he became quite satisfied and easy in his mind. “If that shall be done,” (said he), “the world will have an opportunity of seeing and judging of my share in the murder, a crime I ever abhorred, and the justice done me in the trial.” *Res ipsa nunc loquitur.*—At his receiving the holy sacrament, from the hands of a worthy clergyman, the necessity of confession and repentance was strongly set forth to him, and the question then put, “Are you guilty of the murder of Glenure?” He answered, in a most solemn manner, “I am not guilty of it, even in the smallest degree. If I be, may this which I am about to do, tend to my eternal damnation.” In a word, he gained the esteem and regard of every body; and his military guard admired and pitied him so much, that many of them shed tears at his death: thereby convincing me, that their hearts are not so callous as is commonly thought. I appeal to themselves if this be not true. But let the dying man first speak for himself, when come to the last period of his life. The hour of death, you know, is the hour of truth!

\* Former sufferings, six years ago, had left him no estate; and the expense of this trial exhausted all he had acquired since.

## Appendix VIII.

Notice has already been taken of this James More Drummond; a fellow nursed in villainy; who having been disappointed in the scheme, he owned, he had laid for procuring favour to himself, did, in order to supply the want of his *viva voce* testimony against James Stewart at Inverary, send thither one in writing, declaring as above in the postscript of the dying speech. This declaration had been perused, and was rested upon by one at least of the lawyers on the other side, and was, it is said, handed about among the jurymen in court. It was acknowledged afterwards by Macgregor himself, who had the impudence to call at a gentleman's house, November 17, the day after he made his escape out of Edinburgh castle; where being challenged for making such a declaration, he did not pretend to deny it, but averred, that every thing he had said in it was true. In fine, Stewart suffered, but Macgregor escaped, (in a way not yet accounted for), and enjoys both life, and liberty enough for him; and it is no secret in what part of the highlands he finds protection.

Thus died James Stewart, on the 8th day of November 1752, aged 57;—upon a gibbet, it is true, but—*Id solum est homini turpe, quod meruit pati*. As he had, through the whole of his private life, enjoyed a most excellent and irreproachable character, full of tenderness, charity, and benevolence, and in great esteem with all his neighbours and acquaintances; so did he meet death the king of terrors, with intrepidity, resignation, and the heart-cheering joy of innocence. His serene looks and calm behaviour, at his last moments, surely showed, that his mind was at peace, and happy in the enjoyment of a pure and unsullied conscience. In short, if his character was good at the time of his death, so has it suffered nothing since, but remains to this day equally good and spotless; after the most strict scrutiny and inquisition made into it by his unrelenting enemies.—It is from well-known facts, and the general tenor of a man's conduct, that his real character is to be drawn.

Answer me now, good reader,—was not this man m—d? Legally, indeed, which will never mend the matter,—it rather aggravates.

My heart could dictate much to me on this sad occasion; but I forbear for the present. It will yet wring the hearts of the guilty! I pray God it may in time, before it be too late.

To conclude, many more observations might be made on this famous trial; but it is best to keep within safe bounds; and, lest the reader should weary, and with disgust say to me, as did South-hall the jurymen to Mr Brown,—Pray, Sir, cut short; for the supplement is become long and tiresome, I shall end it with a caution given by Shakespear,

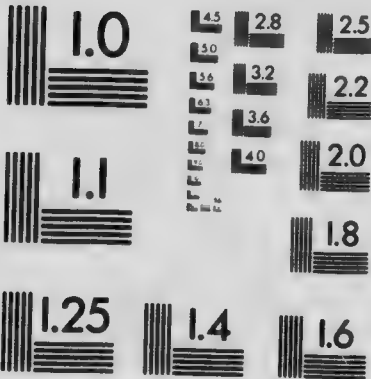
To mourn a mischief that is past and gone,  
Is the next way to draw new mischief on.

END OF "SUPPLEMENT."



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## James Stewart.

### APPENDIX IX.

#### DUNCAN BÀN MACINTYRE'S ELEGY ON COLIN CAMPBELL OF GLENURE.

A LITERAL TRANSLATION SPECIALLY MADE FROM THE ORIGINAL  
GAELIC FOR THIS VOLUME BY MR. DUNCAN REID, F.S.L.A.,  
GLASGOW.

Sad thoughts are in my mind  
That left me in sorrow and grief;  
When to my bed I retire,  
'Tis not to sleep, but awake;  
My cheeks are withered,  
And my eyelids scarcely dry,  
Concerning the news heard from Appin  
That raised us the alarm—  
He of Glenure has perished  
By the injury of malicious persons;  
Sad is my tale to relate—  
That in the dust thou liest—  
Sorrowful are all thy relatives  
Since thy precious body—  
Wrapped in new linen  
To the narrow coffin was consigned.

Thine was the handsome body  
When thou wert in thy wonted health;  
No defect in thy form nor want in thy growth,  
So stately, graceful, shapely, and comely,  
Amiable, gentle, hospitable,  
Noble, humble, loving,  
Kind, clannish, and friendly,  
Without fault to find behind thee.  
Full of wisdom and understanding,  
Daring, courageous, and chivalrous,  
Where'er thy services were asked,  
Successful wert thou in all matters;  
Thy compare was the dragon,  
Or the hawk in the sky;  
Who more like to each other  
Than they and thou?

Painful is the message that came,  
Sad as it now happened  
That thou did'st not avoid the place  
Where death first seized upon thee;  
Beyond the garden gate  
Thou did'st receive the wound that grieves me,  
And no help nigh thee,  
When treacherously they took thee from behind;  
On thy side lying speechless,  
When from thee departed thy breath.  
Thy foaming blood, crimson and beautiful,  
Gushing forth in a stream,  
By the deed of the heartless fool  
Who, without sense and reason,  
Sold his soul for wealth,  
And showed no mercy.

## Appendix IX.

PBELL

ORIGINAL  
S.L.A.,

It was the heart without feeling or pity,  
Without love, joy, or excellence,  
That put hand to thy hurt without cause,  
For want of sense and reason,  
Taking wickedness for his counsel;  
Sad is the event as it happened  
That left us infirm,  
And he himself an outlaw;  
And though unquiet be his bed  
For fear of being apprehended—  
Not for him do I mourn—  
But how the affair happened,  
And for the stately and handsome hero  
Who is now in Ardchattan  
Consigned to the grave—  
In the sleep that awakeneth not.

'Tis thy lasting sleep  
That left my mind so melancholy;  
Oft do vain thoughts  
Afresh rush to my mind—  
Heavily lies my grief upon me—  
More painful is sorrow than fever,  
My illustrious, handsome, and excellent foster-brother  
Having been fatally wounded.  
A thousand curses on that hand  
That took thee so treacherously,  
And that gave effect to the shot  
When to his eye he raised the gun;  
Sure information I would wish  
That it was publicly reported  
That to the gallows he was going  
Till he would fare worse than we.

Whoever conspired against thee  
With evil intent from the beginning,  
Audacious was the attempt to waylay thee,  
To wound thee afresh;  
It was his intention to do thee hurt,  
And dared not his face reveal,  
But silently approaching thee by the hillock,  
Aimed at thee from behind.  
'Twas a pity it happened  
When the powder had flashed  
That thy friends were not near thee,  
Who would bring reprisals upon them,  
And so many active and handsome youths  
That would fear no threats,  
That would set Appin ablaze  
So that they might see thee.

Sorrowfully do we bewail the victim  
Of whom our enemy deprived us:  
Though revenge is unrequited,  
Yet will snares encompass them  
That will place them in a low condition  
For the precious jewel  
Who was in the locality an upright man,  
That practised truth and honour;

## James Stewart.

Pity it is to relate  
That unavenged is the deed,  
That nought has turned up  
To give us satisfaction;  
But, long though the delay be,  
As sure as I say it,  
That treachery shall be requited  
Ere the desire for revenge subsides.  
Strong are the clans  
That could well take thy part—  
The King and the Duke of Argyll  
Who would see thy cause failed not;  
The rightful Earl of Breadalbane  
Foremost advancing—not slowly,  
And many a bold warrior  
Who would stand bravely by him;  
Mackay and his followers,  
With whom would rise up undaunted heroes—  
Numerous, strong, and valorous,  
With their hilt-covered, defensive swords;  
The Black Macdonald and Clan Cameron,  
And many notable chiefs,  
'Tis long since we heard the tale  
How they have proved their fame.

Thou did'st possess by command  
A part of Strathlochy—  
Not for the love of wealth—  
Nor to deprive them of their inheritance,  
But to stand for their rights,  
With thy intimate knowledge of such matters—  
Their rightful heir being outlawed  
Who by right should be there,  
And though tale-bearers should say  
That thine aim has been always  
To be dispersing these people,  
If dispersion be set aside,  
'Twould yet remain to be seen,  
Had'st thou been spared,  
That to be drawing friends towards thee  
From everywhere was thy desire.

Thou wert the heart of generosity,  
So lordly and excellent;  
In presence of Edinburgh's judges  
Oft hast thou unravelled a case.  
Painful to me is the state of thy spouse—  
Young is the widow thou hast left behind,  
Full of sorrow is she,  
Since her lovely fair husband has died.  
Sad to me was the sight  
Of thy grave being prepared,  
And sad are the societies that honoured thee  
Since thou wast consigned to the dust,  
With no hope of thy return.  
'Twas this that has left me inirm,  
To be to-day reciting thy virtues,  
And thou wilt not come to hear my praise.

## Appendix X.

### APPENDIX X.

EXCERPT FROM A MEMORIAL BY LORD GLENORCHY (PROBABLY DRAWN UP IN 1751) AS TO THE INTEGRITY OF GLENURE AND OTHER CROWN FACTORS WHO WERE THEN UNDER SUSPICION (BIGHOUSE PAPERS).

As to Mr. Campbell of Gleneure (half brother to Mr. Campbell of Barcaldine). He is a Factor of only that part of the Estate of late Cameron of Lochail which holds of the Duke of Gordon, and of the very small estate of Stewart of Ardsheil. Another Campbell, whom Lord Glenorchy does not at all know, is Factor of the other part of Lochail's estate, holding of the Duke of Argyll, and of the Estate of Macdonald of Kinlochmoydart.

Mr. Campbell of Gleneure is a Gentleman of known Honour and Loyalty. He was an Officer in the Army abroad, where he behaved well in his station, and upon the peace retired to his own Estate, and is married to a niece of Lord Rae, whose Family as are the Mackays in general has been always Whig.

Mr. Campbell of Gleneure is, indeed, related by his mother to Cameron of Lochail's family, and a handle was taken from thence to insinuate that he acted in everything in concert with Cameron of Fassefern, brother of late Lochail, who, not having been openly in the Rebellion, lives at home. But after the strictest Inquiry made by the Barons of the Exchequer in Scotland, his conduct was in every step approved, and the Falshood and Malice of his accusers evidently appeared.

Mr. Campbell of Gleneure is at the greatest variance with Cameron of Fassefern. He has brought several well affected Tenants into that part of the Estate of Lochail, of which he is Factor, and is daily bringing in more, which makes him hated by the people of that country, and is the true cause of his being accused privately by those who cannot do it openly.

Upon the whole, as Lord Glenorchy would not have recommended Mr. Campbell of Barcaldine and Mr. Campbell of Gleneure, if he had not been thoroughly sure, not only of their being well affected to the Government, but likewise of their being every way fitt for that employment, where knowledge of the Countrey and Resolution are requisite. He will venture the loss of Mr. Pelham's good opinion, which he highly values, if upon a fair and impartial Enquiry those Gentlemen's Principles are not found to be perfectly right.

*Note.*—The author of this memorial was of the family of Campbells of which the Barcaldines were cadets, the first Campbell of Barcaldine (though not so designated) having been a son of Sir Duncan Campbell of Glenorchy. The Lord Glenorchy of this period had been Envoy Extraordinary and Plenipotentiary to Denmark in 1718, and he was afterwards British Ambassador at St. Petersburg. (See Bighouse Papers, &c.)

# James Stewart.

## APPENDIX XI.

"SCROLL MINUTE OF PROCEDURE IN GLENURE'S AFFAIRS AND  
RECOMMENDATION TO DUNCAN CAMPBELL, SHERIFF SUBST., BY  
THE FRIENDS WITHIN NAMED." DATED 13TH JUNE, 1752. (B  
HOUSE PAPERS).

"At Glenure the 13th day of June one thousand seven hundred and fifty two years. The friends and relations of the deceased Colin Campbell of Glenure viz. Hugh Mackay of Bighouse, William Baillie of Rosehall, John Mackay of Tordarroch, John Campbell of Barcaldine, and Duncan Campbell one of the Sheriff Substitutes of Perthshire having convened and inspected the writes evidences and Securities which pertained to and were found in the Repositories of the said Deceased Colin Campbell, made upon Inventory thereof and of the Stocking of Cattle which pertained to the said Colin Campbell, presently on the farms of Glenure and Glendure as the Particular Inventory of the said Writes as well relating to the factory held by the said Colin Campbell as other writes pertaining to him and found in his repositories and List or Inventory of the saids Stock of Cattle, the severall Docquets subscribed by us of this date subjoin'd to the saids severall Inventories and Lists of Cattle, And further recommend to the said Duncan Campbell to use the same Diligence as in his own affairs in Recovering paymt. of the Bills Delivered to him by and for which his receipts and obligemt. stands with me, the said John Campbell, and to lay out whatever money he may judge necessary to be debursed in detecting and prosecuting or in using ways and means to detect and prosecute the murderers of the said deceased Colin Campbell, and in carrying out the management of his farms and Estate, which we hereby ay and while the succession of the Estate of Glenure is declared commit to the management of the said Duncan Campbell, and in generall we authorise the said Duncan Campbell to follow furth and pursue during the space ffor said every plan and scheme that may tend to the improvement and be considered as prudent management of the Estate Reall and personall which pertain'd to the said deceased Colin Campbell, Providing the same does not in the least tend to impair any part thereof, or change the nature of the securitys from heretable to moveable or moveable to Heretable, and we subscribe these presents written by Mungo Campbell writer in Edinr. place and date foresaid."

The docquet at foot is as follows:—

"The above and two preceding pages is an exact inventory of the Bills and other papers therein refer'd to and whereof the numbers are mark'd on the margin of the Inventory and are all Deliver'd to the Keeping and for recovering of the Contents for behoof of all concerned to Duncan Campbell, one of the Sheriff Substitutes of Perthshire, who with us the other friends and relations of Glenure, viz., Hugh Mackay of Bighouse, William Baillie of Rosehall, John Mackay of Tordarroch, and John Campbell of Barcaldine have examined and compared the same, he being always obliged to redeliver them and accott. for his intromissions therew. as accords. And the said Duncan Campbell and we subscribe this Docquet at Glenure the Twenty-third day of June one thousand seven hundred and fifty-two years Before these

## Appendix XII.

witnesses Donald Campbell younger of Ballevolan and John Campbell younger of Raghray and John Campbell elder of Ballevolan.

DONALD CAMPBELL, Witness.  
JOHN CAMPBELL, Witness.

JO. CAMPBELL.  
JOHN MACKAY.  
HUGH MACKAY.  
WILL BAILLIE.  
DUN. CAMPBELL."

## APPENDIX XII.

### PAPERS RELATING TO THE PROPOSED EVIDENCE BY JAMES MOR M'GREGOR DRUMMOND.\*

(1) MEMORIAL BY JOHN CAMPBELL OF BARCADDINE TO THE BARONS  
OF EXCHEQUER AS TO THE EVIDENCE OFFERED BY JAMES MOR  
M'GREGOR DRUMMOND.

To the Right Honourable the Lord Chief  
Baron and Barons of His Majesty's Court  
of Exchequer in Scotland.

The humble Memorial of John Campbell of Barcaddine, sheweth:  
That ever since the murder of Colin Campbell of Glenure your  
memorialist with some of his other relations have been constantly  
employed with the assistance of the King's servants both civil and  
military in endeavouring to discover the bloody authors of that  
barbarous assassination, and altho the most diligent enquiry has  
been made yet your memorialist is sorry to inform your Lordships  
that hitherto the proof appears not so strong as could be wished.

The proof points chiefly at Allan Breck Stewart, who is not in  
custody, as the assassin who committed the murder, and against  
James Stewart of Aucharn, a bastard brother of Ardsheal's, who is  
in custody as the person who contrived and assisted the barbarous  
design, to which he was moved by Revenge against Glenure, first  
for having accepted the Factory at all, and afterwards for having  
by Order of Your Lordships turned out the said James Stewart and  
some other of his favourites who were in possession of parts of the  
Estate of Ardsheal and setting their possessions to Tennants who  
were friends of the Government, and who would not pay a yearly  
subsidy to Ardsheal and his family over and above their nominal  
rents to the Crown.

It is intended to bring on the Tryal of the said James Stewart  
at the ensuing Circuit at Inverary, and your memorialist having  
been lately informed that James Drummond alias M'Gregor,  
present prisoner in the Tolbooth of Edinburgh, would be a material  
witness against him, for that the said James Stewart did visit  
Drummond in the Tolbooth of Edinburgh in the month of April  
last, and after making frequent mentions to Drummond of Glen-

\* From the Manuscript Records of the Barons of Exchequer in Scotland (Advocates' Library).

## James Stewart.

ure's name in a opprobrious manner did propose to him a scheme of disabling Glenure from acting as factor on the forfeited estates. What he proposed was that James Drummond should give him James Stewart a letter directed to Robert Campbell alias M'Gregor brother to the said James Drummond (a person under sentence of fugitation), desiring the said Robert to do whatever the said James Stewart directed him, particularly to murder Glenure, for which purpose the said James Stewart was to furnish a very good gun. James Drummond's bribe was to have been a prorogation of a very beneficial tack or lease from a near relation of James Stewart's to whom he was Tutor, and the bribe to Robert was to be James Stewart's affording him money to carry him to France where by Ardsheal's interest he was to get a Commission in the French service or a pension, whichever of them he chused.

This James Drummond alias M'Gregor has been lately tried before the Court of Justiciary for the crimes of being aiding and assisting in forcibly carrying a young woman away from her own house and causing her to be married to his brother against her consent, and a special verdict has been returned by the jury, upon which the Court mett to give judgment, but some difficulty having arisen in point of law whether from the verdict a capital punishment could have been inflicted or not, the Court have delayed pronouncing sentence till November next.

A great majority of the Jury who remained in town came to the Court and declared that they meant to excecun Drummond from capital punishment, so that if the Court had pronounced sentence of death its very probable the Jury would have applied to His Majesty for mercy.

The tryal of James Stewart is to come on at Inverary the 21st of Sept. N.S. at which time James Drummond will be incapable of giving evidence unless he first be capacitated by a pardon.

In these circumstances it may probably occur that the conviction of the murderers of Glenure will be of more service to the Government than the taking away the life of James Drummond, so that if the matter be properly represented to their Excellencies the Lords Justices they may possibly be prevailed with to grant Drummond a remission to enable him to be a witness against the sole contriver of the murder of Glenure.

Your memorialist thought it his duty to represent this matter to your Lordships that you may, if it be thought proper, represent the case of the Lords Justices. I have the honour to be your lordships' servant myself. My brother was killed in your service, and therefore I know not to whom I can more properly make this application.

(Signed) Jo. CAMPBELL.

*Note.*—This memorial was sent by the Barons to Mr. Pelham, Chancellor of the Exchequer, with the following remarkable docquet:—

Being persuaded it will be greatly for the service of the Publick that James Stewart mentioned in the Memorial herewith sent be convicted, we humbly beg to submit to your Lordship's judgment whether it is not proper to apply for the pardon according to the prayer of the Memorial. We are, Sir your most faithful and obedient Servants.

(Signed) J. IDLE.  
EDW. EDLEN.

Exchequer Chamber, Edinb'. 12th Augt. 1752.

Directed to the Right Honourable Henry Pelham, Esq.,  
Chancellor of the Exchequer, London.

## Appendix XII.

### (2) THE OFFICIAL REPLY TO MR. CAMPBELL'S MEMORIAL WAS IN THOSE TERMS—

Whitehall, Septr. 14th 1752 N.S.

My Lord and Sir,—The Earl of Holderness having this day laid before the Lords Justices your letter of the 12th of August inclosing the Memorial of John Campbell of Barcaldine which had been delivered to his Lordship by Mr. Pelham to whom you had transmitted it, I am commanded by their Excellencies to acquaint you that they have taken the same into consideration, and as their Excellencies are extremely desirous that the several persons concerned in the infamous murder of Mr. Colin Campbell of Glenure, late factor on the estate of Ardsheal, should be brought to condign punishment, and particularly that James Stewart of Aucharn who is now in custody and is to be tryed at the ensuing circuit at Inverary for contriving and abetting that horrid crime should not escape the judgement of the laws for want of evidence, they gave the utmost attention to the said Memorial, and especially to that part of it wherein it is desired that James Drummond alias M'Gregor, who has been lately tryed before the Court of Justiciary for a very heinous offence, should be pardoned in order to enable him to become a witness upon the tryal of the said James Stewart on the 21st of this month.

The Lords Justices are easily induced to believe that James Drummond has been instrumental for and privy to several atrocious crimes and very possibly to that in w. h the said Stewart is supposed to have been concerned, and tho James Drummond has not yet received the judgement of the Court for aiding and assisting in forcibly carrying away a young woman from her own house and causing her to be married to his brother against her consent (a special verdict having been found by the jury upon a point of law which can not be determined till November next), yet their Excellencies hope that sentence will at last be pronounced against him to the utmost extent of that justice he shall appear to have deserved. And they have directed me to acquaint you that the prayer of the Memorial above mentioned can not be complied with in this case as there will not be time sufficient before the tryal of James Stewart to apply to His Majesty for his royal pardon in order to capacitate James Drummond to give evidence upon that occasion altho' the circumstances had been still more strong and perswasive to make their Excellencies imagine that the testimony of the one would materially tend to the conviction of the other.

I have the honour to be, with great regard, My Lord & Sir, your most obedient Humble Servant,

CLAUDIUS AMYAND.

Directed thus—To the Lord Chief Baron Idle and Mr. Baron Edlen, Judges of His Majts. Court of Exchequer, at Edinburgh.

C. AMYAND.

## James Stewart.

### APPENDIX XIII.

#### LETTERS RELATING TO THE MURDER OF GLENUR, WRITTEN PRIOR TO THE TRIAL (BIGHOUSE PAPERS)

(1) LETTER FROM CAPTAIN ALEXANDER CAMPBELL, SON OF JOHN CAMPBELL OF BARCADDINE, TO HIS UNCLE (PROBABLY SHERIFF DUNCAN CAMPBELL, WHO SUCCEEDED THE MURDERED MAN AS OWNER OF GLENUR), DATED 25TH MAY, 1752.

Dr. Sir.—The inclos'd was put into my hands in bed this morning about 7 o'clock, the unhappy situation of affairs, I hope, will excuse my breaking it open. Phasanacloich has not been att home ever since this melancholy accident, I believe he is in Perthshire and most probably amongst the Stewarts of Atholl. He was seen with Allan Breck, and stayed with him all Munday night at Balcachellie, and travell'd with him on Tuesday to Port Callart none but he, I mean young Phasanacloich, in company: there are several other concurring circumstances too tedious to mention here that makes it highly probable Phasanacloich knew every step intended: Particularly his refusing to go att his uncle, the Notair desire to meet Glenur, and endeavour to keep all things quiet, and I am sure Breck is such a fellow as could not conceal his intention from Phasanacloich when they were so long together without the least interruption. I have order'd the man on Lupenair (Lupenairt) and his maid to be brought here, and am in hopes of making some discoveries from them as I am credibly inform'd there is a great connection betwixt him and Breck and the whole Damned Race; I am certain we have the principal actors in custody, God Almighty, of his infinite mercy, grant their villain may come to light. I have likewise sent a proper man into Glenure that I hope will be able to gett us pretty exact intelligence, and beg my duty in the kindest manner to my Aunt and best wishes to the young Laird.—Ever am, Dr. Sir, your most affectionate nephew and very humble servant,

ALEXR. CAMPBELL.

Glenur, May 25th, 1752. 10 o'clock a.m.

I think there ought (to be) a search made for Phasanacloich as he is not at home, and we have a warrant against him.

A. C.

Note.—The Monday referred to was that which immediately preceded the murder of Glenure.

(2) LETTER TO THE LORD JUSTICE-CLERK, UNDATED, BUT PROBABLY WRITTEN IN JULY, 1752. (THIS IS PROBABLY A COPY OF A LETTER FROM JOHN CAMPBELL OF BARCADDINE.)

My Lord.—In the course of the Inquire I have been making to find out the authors of my Broyr's murder I am informed that James Stewart in Acharn, the Bastard Broyr, of Ardsheal, now prisoner att Fort William as Suspected of being principally con-

## Appendix XIII.

cerned in Gleneur's murder, when in this town in April last about getting a suspension of the Decree of Removal, at Gleneur's instance against the Tenants of Ardsheal, Did visit James Drummond alias M'Gregor Prisoner in the Tolbooth of Edr., and after making frequent mention to the said James Drummond of Gleneur's name in an opprobrious manner Did propose to him a scheme of Disabling Gleneur from acting as factor upon the forfeited Estates, what he proposed was that James Drummond should give to him, James Stewart, a letter directed to Robert Campbell alias Macgregor, brother to the said James Drummond (a person under sentence of fugitation) Desiring the said Robert to do whatever the said James Stewart desired him, particularly to murder Gleneur, for which purpose the said James Stewart was to furnish a very good gun, James Drummond's bribe was to get a prorogation of a Beneficial Tack he then enjoyed from a near relation of James Stewart's to whom he was Tutor, the bribe to Robert was James Stewart's affording him money to carry him to France, where by Ardsheal's interest he was to get a Commission in the French service, or a pension, whichever he chose.

Your Lordship knows James Drummond's evidence can signify nothing in his present situation, which is extremely un lucky, as he would make a most material Witness against James Stewart, and otherways I am afraid the proof will be scrimp. I will not pretend to say more than Referr to your Lordship whether it is not really the Interest of the Government to Bring the murderers of Gleneur to the end they deserve, as it is evident he lost his life for and in doing his duty.

On an enclosed slip is the following:—"The Tryal of James Stewart at Inveraray is to come on the 21st of Sept. new style at which time James Drummond will be incapable of giving evidence unless he be first capacitated by a Pardon."

[Note.—There is another draft letter in the same writing, and also undated. It was probably written in 1755, and it refers to an application by the minister of Appin and Lismore, at the instigation of Stewart's friends, for the farm of Glenduror, from which James Stewart had been removed at Whitsunday, 1751.—*Ed.*]

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(3) LETTER FROM COLONEL JOHN CRAWFURD TO JOHN CAMPBELL OF BARCALDINE, Esq., DATED "12TH JULY," AND OBVIOUSLY WRITTEN IN 1752.

Dear Sir, As it is probable I will not be in town this night may beg that in your writing to Inveraray the 3 follg. Questions may be put to Dougald M'Coll and inserted in his recognitions, 1st, as to having seen Allan Breck in ye Brewhouse handling one of his master's guns and complaining of the locks. 2nd, the time he saw young Allan going wth Laggan How (i.e., Lagnaha) towards the wood on the day of the murder; and 3rd, that both M'Colls should be strongly dealt with as to the conversation mention'd by Dunn. Roy in the prison and the causes for pitying young Allan, and why they thought he would be hang'd as well as

Favr.  
and write to F. William desiring Merch. Roy, James and his  
each all be recognised about the Horn, and the Sergt. and

## James Stewart.

party about Cloaths and horn. The M'Colls shou'd be again tax  
about the Horn.—I am allways, most faithfully yours,

JOHN CRAWFURD.

Wednesday mornng., 7 o'clock. 12th July.

*Note.*—The M'Colls referred to were two of the sons of  
James Stewart; they were held as prisoners at Fort-William, and  
gave evidence at the trial (*q.v.*).

(4) LETTER FROM DUNCAN CAMPBELL (SHERIFF-SUBSTITUTE OF  
PERTHSHIRE), TO HIS BROTHER, JOHN CAMPBELL OF BARCADDINE,  
DATED 17TH AUGUST, 1752.

DUN., 17th August, 1752.

Dr Br.,—As I must hurry to Breadalbane and Rannoch in  
order to precognosce some people there who there is reason to  
believe must have known some material circumstances anent Allan  
Breck's motions since our Broyr. Glen's murder (I) do hereby  
recommend to you to see all the accounts that are still unpaid  
owed to us of Deposements in prosecuting the said murderer  
paid before you leave this place, and I'm yours, &c.,

DUN. CAMPBELL.

To John Campbell of Barcaldine, Esq.

# Appendix XIV.

## APPENDIX XIV.

### PAPERS RELATING TO THE COSTS OF THE TRIAL &c.

#### (I) AN ACCOUNT OF EXPENSES LAID OUT CONCERNING GLENURE'S MURDER PROSECUTING THE COMMITTEES THEREOF.

1782.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |              |                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|------------------------|
| Article 1. To paid Mungo Campbell writer in Edinburgh who was along with Glenure when murdered, his expenses, sending expresses to Fort William and Glenure's friends, to acquaint them of the murder, apprehending and transporting to Fort William James Stewart in Aucharn Allan Stewart his son and John Begg McCall his servant all suspected to be in the knowledge of the murder as committers thereof                                                                                                                                                                                                                                                            | 26 13 11     |                        |
| " 2. To the said Mungo Campbell further laid out by him concerning the murder, his expenses at Fort William in June etc. and in going to and returning from Carlisle, when it was informed Allan Breck was apprehended there, tho' it proved false, and some small charges he paid Collorell & Awford                                                                                                                                                                                                                                                                                                                                                                    | 27 9 1       |                        |
| " 3. To James Campbell writer in Inverary Deputy Sheriff Clerk of Argyll shire who attended the Sheriffs of Inverness and Argyllshires from 18th May to 13th June 1782 both Inche, while recognitions were taken concerning the said murder in Appin, Duror, Glenure, Mamore and Lochaber, there being upwards of 700 persons pre-recognized in obedience to order from the Justice Clerk as p. accott, thereof and his receipt                                                                                                                                                                                                                                          |              | £34 3 0                |
| " 4. To expenses of entertainment to the Sheriffs of Argyll and Inverness, Justices of the Peace, officers of the military, many gentlemen and others who attended taking said recognitions at several different places in Appin, and at Fort William, there being upwards of 60 persons daily entertained from 18th May to 13th June provisions being very scarce at that time of the year, and it being necessary to bring them from a distance<br>To sundry expenses paid to persons employed in search for Allan Breck who was suspected to be the actual murderer before and after the Lords Justices published a reward to any who discovered the murderer, vizt.: |              | 34 13 7 1/2<br>225 0 0 |
| " 5. By an account of expenses laid out by Captain Alexander Campbell younger of Barcaldane                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 25 15 8      |                        |
| " 6. By do. laid out by John Campbell of Barcaldane                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 14 15 11     |                        |
| " 7. By do. laid out by Alexander Campbell of Ardsheil                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 10 0 0       |                        |
| " 8. To paid witnesses cited to the Tryal their expenses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |              | 30 11 7                |
| " 9. To expenses of entertainment during the Tryal, to Lawyers, Jury and Jorrs, attending therein p. account thereof                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |              | 28 0 1                 |
| " 10. To John Campbell writer in Inverary his expenses from the 20th July till the 23rd August while going to, at, and returning from Edinburgh, and for his pains, he being employed to attend the Lawyers at Edinburgh, at consulting them, and as agent at the Tryal etc. p. account thereof and other disbursements by him<br>To sundry expenses laid out in the country and at Edinburgh, by Glenure's Bro'r concerning his murder and the Tryal yrof vizt.:                                                                                                                                                                                                        |              | 125 10 9<br>39 13 0    |
| " 11. By Barcaldane p. account thereof                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 276 2 10 1/2 |                        |
| " 12. By Duncan Campbell Sheriff Subt. of Perthshire p. accott.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 73 1 6       |                        |
| " 13. By Robert Campbell Merch. in Stirling p. accott.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 14 17 0      |                        |
| " 14. To paid the King's Advocate Mr. James Erskine, Mr. Simon Fraser, Mr. John Campbell and Mr. Robert Campbell, Lawyers, and Mr. Alston the Crown's Solicitor for their trouble and pains in going to Inverary, and assisting at the Tryal                                                                                                                                                                                                                                                                                                                                                                                                                             |              | 164 1 4 1/2            |
| " 15. To paid the messengers account for executing the Criminal Letters and for citing the witnesses and Jury and returning them to the Court                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |              | 235 0 0                |
| " 16. To the Clerk of Justiciary his account for extracting the Trial from the Record, in order to publish it                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |              | 80 1 3                 |
| " 17. To Alexander Robertson Clerk to the Signet and Robert Watt Writer Joint Agents in the Trial, their account of money disbursements to Lawyers at Edinburgh, officers of Court for writing and for their own pains                                                                                                                                                                                                                                                                                                                                                                                                                                                   |              | 16 5 0                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |              | 251 9 2 1/2            |

\* From the Manuscript Records of the Barons of Exchequer in Scotland.

## James Stewart.

(2) PETITION BY GLENURE'S RELATIVES ASKING FOR REPAYMENT OF THE EXPENSE INCURRED IN PROSECUTING JAMES STEWART.

To the Right Honourable the Lords Commissioners of His Majesty's Treasury.

The Humble Petition of Janet M'Kye Daughter of the Honourable Hugh M'Kye of Bighouse Esquire and widow of the Deceast Colin Campbell of Glenure for herself and on behalf of Elizabeth and Lucy Campbells Her Infant Children.

Sheweth: That the said Colin Campbell of Glenure was the son of Patrick Campbell of Barcaldane of a second marriage and as such received for his provision the lands of Glenure a small estate in the northern parts of Argyllshire and adjoining to that part of the Country possessed by the Stewarts of Appin—Comprehending *inter alia* the lands that belonged to Charles Stewart late of Ardsheil attainted.

That the said Colin Campbell served His Majesty sometime in the army in the quality of a Lieutenant in the Earl of Loudon's Regiment, and in the year 1748 he came home and intermarried with your Petitioner, and being still ready to serve His Majesty in such manner as the situation in the country gave him access to, He in the month of February 1748/9 accepted of a Factory from the Barons of Exchequer which was approved by your Lordships upon the forfeited Estates of Ardsheil being of yearly

|                                     |   |   |   |   |           |
|-------------------------------------|---|---|---|---|-----------|
| rent,                               | - | - | - | - | £50 18 5½ |
| Called formerly Camerons,           | - | - | - | - | 40 16 1½  |
| Part of Lochiel in Inverness-shire, | - | - | - | - | 118 18 8  |

In all, - - - - - £210 13 2½

That for this various, troublesome and as it hath since appeared most dangerous duty the salary or appointments which the said Colin Campbell had was no more than after the rate of 5 per cent. of the rent roll of the lands under his charge, amounting per annum to £10 10s. 7½d.

That in the faithfull Prosecution of his Duty it hath now appeared upon full Tryall, that the said Colin Campbell rendered himself obnoxious to the resentment and Deadly hatred of James Stewart in Acharn, a Bastard Brother of Charles Stewart of Ardsheil attainted, who with others his accomplices entered into a conspiracy to Lye in wait for and assassinate the said Colin Campbell, which was accordingly accomplished on the evening of Thursday, the 14th of May last as he was returning from Fort William where he had been upon duty in respect of the Lochiel estate and was passing thro' the wood of Lettermore upon the Ardsheil estate, to keep an appointment he had made at a publick house on that estate in order to remove certain Tennants in due course of Law the day following, and at this time and place he was basely murdered by being shot thro' the Back as he rod along the road, with two musket balls fired upon him by an assassin concealed in the wood by which in a little time he died on the spot.

That this base and execrable murder as a publick crime was a most daring and audacious insult upon his Majesty's Laws and Government and as a private Injury created the most pitifull and compassionate case that can well be imagined.—The deceast was himself a young man cutt of in the flower of his age for no other cause nor offence than doing his duty in the King's and the Publick Service with Fidelity and Zeal. And the situation of his Family when he was thus cutt of was, that besides the two infant children above named he left Petitioner, his wife, with child.

## Appendix XIV.

In these circumstances the family and the brothers of the deceased without making any previous application to your Lordships or even to the Officers of the Crown at Edinburgh to make a provision for the Expences of an Enquiry or prosecution for this murder applied themselves with outmost Diligence and Vigour to make the necessary Discoverys in which they received the aid and concurrence of all his Majesty's officers civil and military with great alacrity; but by reason of the remoteness of the place where this Enquiry was carried on, the great number of persons whom it was necessary to summon and examine and many of them to commit and Detain before any material Discovery could be effectually made, a very great expence was necessarily incurred, all which was advanced and defrayed by the Family and near relations of the Deceased, and last of all the expence of the Tryal that was brought before the Circuit Court at Inverary where Allan Breck Stewart formerly a Rebel and now a soldier in the French Service who had been discovered to have been the actor of this murder, but had made his escape was outlawed, and the said James Stewart who was in custody stood his Tryal and was convicted of accession to the said murder, and was condemned and hath suffered accordingly.

That if the expence of the previous enquiry and examinations and of the subsequent Tryal in this very singular case had not greatly exceeded what the estate or family of the deceased is able to bear, the Petitioner would not have thought of Troubling your Lordships with this application, but as in reality these expences from first to last, as they are ready to verify, have amounted to upwards £1300 the Petitioner hath found herself under a necessity humbly to apply for relief to the end that the Family or heirs of the deceased may not become further sufferers by the Legal Redress which they found it their duty to pursue.

So great a sum being laid out for bringing to Justice in the Highlands of Scotland one criminal, the Petitioner is sensible may appear at first sight to be excessive, but the remoteness of the place where the fact happened and the Enquiry behoved to be made was one principall cause of the greatness of that expence one article of which for instance consists of Entertainments provided for the officers Civil and Military and numbers of Persons who Dayly attended during the examinations or precognitions that were taken from the 18th of May to the 13th of June last, being a season of the year when provisions are scarce in that Country and behoved to be brought from a distance and this one item amounted to £225. The veracity however of the account and the necessity or propriety of every part of it, the Petitioner humbly submits to examination in such manner as your lordships shall be pleased to direct.

The Petitioner therefore humbly prays your Lordships to consider the present case of the family of the deceased Colin Campbell of Glenure and to represent the same favourably to his Majesty to the end that he may be graciously pleased to grant us such relief as to his Royal wisdom and goodness shall seem fitt, and your petitioner shall ever pray, &c.

DUNCAN CAMPBELL,

Brother German to the Deceased for the Widow and Children.

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## James Stewart.

(3) LETTER ON BEHALF OF THE TREASURY SUBMITTING THE ABOVE PETITION FOR THE OPINION OF THE BARONS OF EXCHEQUER THEREON. DATED 8TH MARCH, 1753.

My Lords,—The Lords Commissioners of His Majesty's Treasury command me to transmitt to your Lordships the enclosed copy of the Petition of the Widow of the Deceased Colin Campbell of Glenure, late factor on the forfeited estates of Ardsheal, Callart, and part of Lochiel, who was murdered in the execution of his duty, and also a copy of an account of the expence of prosecuting and convicting James Stewart as an accessory to the said murder, which being of so heinous a nature committed on a officer of the Crown in the execution of his duty the expence was always intended to be defrayed by the Crown. But as this demand so far exceeds what my Lords expected, they therefore desire your Lordships will be pleased to take the several articles charged in the said account into your consideration, and report to their Lordships your observations thereupon with your opinion what may be reasonable to be allowed for this service.—I am, my Lords, your Lordships' most faithfull humble servant.

J. WEST.

Treasury Chambers 8th March 1753.

Directed to the Right Honourable the Lord Chief Baron and the rest of the Barons of His Majesty's Court of Exchequer in Scotland at Edinburgh.

[It appears from the records of the Treasury, now deposited in the Public Record Office, that it was all along intended that the costs of the prosecution of James Stewart should be paid out of public funds. As the amount of the expenses exceeded the estimated figure, the Barons of Exchequer were asked, as above, to report what, in their opinion, was reasonable to be allowed (Treasury Out-Letters (Various), vol. 70). After Mr. Moncrieffe's report had been considered, a Royal warrant, dated 20th March, 1754 (Treasury Out-Letters (Various), vol. 71), authorised the payment of £1334 9s. 2d. to Mr. William Alston, the Crown agent, in settlement of the whole costs of the trial, and that sum was charged to the Revenues of Scotland.—*Ed.*]

## APPENDIX XV.

### LETTERS RELATING TO THE TRIAL AND WRITTEN THEREAFTER. (BIGHOUSE PAPERS.)

(1) LETTER, MR. GEORGE MACKAY TO JOHN CAMPBELL OF BARCALDINE, Esq., ADDRESSED TO HIM "AT CRIEFF BY EDINE.," AND MARKED "FREE G. MACKAY."

Skibo, 8th Oct., 1752.

Dr. Sir,—I received yours from Inveraray by the Express with the accts. of James Stewart's Tryal, which gave me the greatest satisfaction, as it must to those much less interested than me, yea to all Lovers of Mankind, that a person guilty of so horrible a

## Appendix XV.

crime should suffer a punishment he so justly deserves. I regret I have not had the particulars of the Tryal, and I am very anxious to know them, but in the necessary hurry you must have been in when you wrote to me, I could not look for your writing a full acct.

I approve much of printing the Tryal. I have writt to Edinr. for a copy of it when printed, and I'll have it in course. I and all friends have a just sense of the fatigue and trouble you must have had on this occasion, and how much the success we all wished for is owing to your attention and Diligence: you say it was not in my power to bear a part of the burden with you, wch. if the tryal had happened at any other time than when it did, I would have done with the greatest chearfulness, and if there are any other Tryals to come on, I shall on the least notice attend them, and give all the assistance in my power. There is a Report here of such strong circumstances having come out in James Stewart's Tryal agst. his son, that he is soon to be try'd at Edinr. I beg you'll be so good as to acqt. me what is in this.

All friends here join me in our kind compts. to you and famil-, and I am, Dr. Sir, your most obedt. most hble. sert.,

GEO. MACKAY.

*Note.*—The writer of this letter was probably the Hon. George Mackay of Skibo, a half-brother of the father of the murdered man's widow. He was a Scots advocate, member of Parliament for Sutherland, Master of the Mint for Scotland. His second son, Eric, became the seventh Lord Reay. (See "Book of Mackay," p. 193.)

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(2) LETTER FROM LIEUT. (OR CAPT.) ARCHIBALD CAMPBELL TO HIS BROTHER, JOHN CAMPBELL OF BARCALDINE, Esq., "TO THE CARE OF MR. HUGH CAMPBELL, MERCHANT, A LITTLE BELOW THE CROSS, EDINBURGH."

Limmerick Oct. 23rd 1752.

Dr. Br.,—This is my second letter from Limmerick. I was in hopes to have heard from you before now. I find by the English papers that one of the villains that murdered our poor brother is condemned. I'm sorry I have not a fuller account than I meet with in the papers: had my state of health been good or indeed as it was Had I the least notice from you or opinion myself that I cou'd be of use by crossing the water I wou'd have endeavour'd to gett leave. Allan sent me a letter from Robie of an old date: we have been an unfortunate ffamly for two years past; is there any hopes of hanging more of these Banditti was James Stewart supposed to be the man that shott poor Glenure is he a Brother of Ardsheals wont many of the poor people of that countrie be Banished how does my poor sister in law doe is she with child her situation must have been dreadful I intreat you'll write me as fully of the Particulars of this Black affair as possible, since James Stewart's tryall has unravelled their Hellish plott. I hope your ffamilie are well and the rest of our ffrriends, the Lord Glenorchy that now is I hope is well, he is always the first in my prayers. I can not gett a proper opportunity of sending some slips of Cacogee to Taymouth, nott, I'm afraid, till we goe upon Dublin duty, which will be next year, we are so far from any correspondence with Scotland here, and they would require some

## James Stewart.

care, I can easily send them to Port Glasgow, the Collector there promised to take care of them. My health is much the same as it was, rather better time and the strict temperance I observe I believe will get the better of it, I have not had the least cough for a great while. I'm obliged to be blooded now and then still, which is my only complaint. I hope on the receipt of this you'll write me and not give me room to think myself quite forgot.—I am, Dr. Br., your affectionate Brother and humble Servant.

ARCHD. CAMPBELL.

*P.S.*—When I wrote you before I directed by Portpatrick, which is your side of the water, in place of Donahadee, throw mistak, tho' I fancy you must have gott my letter. This goes by Jock Innes, who came six miles out of his way to see me.

*Note.*—Archibald Campbell was Glenure's younger brother. He was an officer in the army.

(3) LETTER, LORD BREADALBANE TO JOHN CAMPBELL OF BARCALDINE, Esq., DATED 18TH NOV., 1752.

Edinr., 18th Nov., 1752.

Sir,—I received on Thursday your letter of the 11th. I don't know where it lay so long, nor how it came here, having been given in at the door to one of the servants by a person who said nothing further.

I writt that same night by a man who was going to Taymouth to Achalader, and I bid him inquire particularly about the circumstances of Benmore, what Stewart asks for it, what I ought properly to give for it, and if money can be procured in the Countrey to pay for it. If you can solve any of these questions I wish you would send your opinion to John about it. It is certainly right for me to have it, but gold may be bought too dear, and I imagine Stewart will make no scruple of proportioning his demand to the conveniency it would be to me; which should be guarded against as much as we can.

It is now just a month since I writt to London about the expenses of the Prosecution, but have had no answer, by which I imagine the Ch--r has not had an opportunity of speaking to Mr. P. about it. I mentioned it here to the D. of Arg., who is of opinion the Government ought to pay it, and indeed I imagine they will. His Grace leaves this place about Tuesday or Wednesday. He dined with me yesterday, and went afterwards to Brunstein, from whence he is to come in to-morrow evening. He intended to have been on the Bench Monday next upon the affair of Drummond's (Macgregor's) sentence, but he has taken care to prevent any consequences from it by escape on Thursday evening out of the Castle. This makes a great loss, and I'm told the Jacobites say it was connived at by the D. of Arg. and the Adv. for offering his evidence against James Stewart, whereas neither the D. nor the Adv. have any influence in the Castle. It is owing to the negligence of the Guard, which I believe will be strictly enquired into, and by what I can guess, he would have been hanged if he had not got off.

We came in good time to town, I observed bad weather behind us, and snow on the Pentland Hills, which is since gone, but I doubt if it will leave our mountains before June.

Adieu Yrs. B—.

## Appendix XV.

I shal' not set out for London till about the first day of next year. have seen Js. Stewart's last speech; which I think makes it more necessary to print the Trial.

*Note.*—John Campbell, third Earl of Breadalbane (1696-1782), was the son of John, second Earl, usually known as "Old Rag." (See Sir Walter Scott's note to "Sinclair Memoirs," p. 185.) In 1718 he was appointed Envoy Extraordinary and Minister Plenipotentiary to Holland. In 1725 he received the Order of the Bath, and six years later he became Ambassador to Russia. He represented Saltash and then Orford in Parliament, and in 1752 he succeeded his father as Earl of Breadalbane. In 1776 he was appointed Vice-Admiral of Scotland.

### (4) LETTER FROM BARON MAULE TO JOHN CAMPBELL OF BARCADDINE, ESQ., DATED 20TH NOVR., 1752.

Edinr., 20 Novr., 1752.

Sir,—I am favoured with yours of the 11., and has had opportunity of conversing with the D. of Argyll upon ye subject of it, who I assure you is as much convinced as you can be, of ye heave charge your Brother's family must have been put to in prosecuting the murderers and bringing them to justice; and that it is for the honour of the Government that they should be reimbursed. I am persuaded his Grace will say everything he can when he goes to London to persuade the King's servants of it.

I shall do everything I can to forward your Petition before ye Trustees wt. regard to the Spinning School, which I hope will do, provided our funds answer, which this year are very low.

I mentioned James Campbell at Dunoon, but whether it will be remembered is more than I can answer for.—I am, with great truth and esteem, Sir, your most obedient humble servant,

JO. MAULE.

### (5) LETTER FROM LORD BREADALBANE TO JOHN CAMPBELL OF BARCADDINE, ESQ., DATED "EDINR., 21ST NOVR., 1752."

Edinr., 21st Novr., 1752.

Sir,—After I had sent my letter to you on Saturday to the post, I received one from my Ld. Chr. in which he says that he would have answer'd my letter sooner but was desirous to make some enquiry relating to the subject of it. This agrees with what the Adv. told me lately, viz., That the Chr. had wrote to him to know by whom the expence of the prosecution had been paid. The Chr. goes on in his letter to me and says that he dares be confident that I am fully persuaded that there has been no want of zeal and vigour in enforcing the prosecution of the murderers from London, and he is convinced it has been pursued in Scotland with great earnestness and with thorough diligence and attention.

He wishes heartily that the principal actors, and more of the contrivers of that horrid fact, could be found out and brought to justice, that more examples might be made besides James Stewart. Then he says that as to the expences of the Prosecution, he is

## James Stewart

informed that it was always intended that the burden of it should be borne by the Government, and that there is no inclination to throw any charge upon the family which is proper for the Government to take upon themselves. He adds that he cannot take upon himself to determine how far this intention may extend to any collateral expences occasioned by any particular personal enquiries made by the family of the deceased, but does not doubt but you will have no reason to complain of the usage you will receive, upon a proper application made to the officers of the Crown on this unfortunate occasion. I will take the meaning of this to be that the Treasury will pay all the expences that really and strictly regard the prosecution, but possibly will scruple to pay some particular (tho' perhaps necessary) expences, such as persons sent privately by you for intelligence relating to the murder, and other expences of that nature. This is my notion of it, but upon the whole you see the Government is to bear the charges of it, and very likely will pay every shilling laid out.

In answer to another letter which I writt to him after the other in which I advised taking proper methods to pursue this affair further while it is warm, he says that I am certainly in the right in thinking that the utmost diligence and vigilance ought to be exerted in finding out the other persons concerned in this barbarous murder, not only in order to punish them for that crime, but to exterminate them out of the country, but that stronger orders can not be framed than those which have been sent from London to all the King's Officers, civil and military in Scotland, for both those purposes, and he thinks they ought to be reminded to them.

I have transcribed his own words as far as can be done in an extract.

He says he has given a hint (as I writt to him) that enquiry should be made in France relating to Allan Breck's being come back to his regiment, that we may be able to judge if he is still in this country.

I writt to him that Dr. Cameron and Lochgarry were come over and had a meeting with young Glengarry: which he had not heard. Pray let me know what you learn relating to them and whatever of that kind occurs at any time; which information may be of use in many respects. The General says those two persons are not come over, but that some others are, whose names he had forgot, and I have not seen Stewart to ask him. I'm perswaded you'll do all you can to get particulars and true information and send them to me here and afterwards to London. I will most readily pay any expences for procuring intelligence which may be depended upon, so ay do not stick at money.—  
Adieu, yrs., B—.

(6) EXCERPT FROM LETTER FROM THE HON. HUGH MACKAY OF BIGHOUSE (FATHER OF GLENURE'S WIDOW) TO JOHN CAMPBELL OF BARRCALDINE, ESQ., DATED "TONGUE, 25TH DECR., 1752."

This night also I have got Stewart's last speech under cover from Mr. McVicar, but as ye post must go of in a few hours, I have yet not time to read it. Some people believe him guilty and oys. that he died a Martyr: for my part, I am very glad that the sentence was properly execute agst. him.

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(7) EXCERPT FROM LETTER FROM LIEUTENANT ARCHIBALD CAMPBELL TO HIS BROTHER, JOHN CAMPBELL OF BARCADDINE, DATED "LIMERICK, 4TH JAN., 1753."

Limerick, Jan. 4th, 1753.

Dr. Br.—I received yours of the 9th of Dec. I find you then had not received my last letter: our poor Brother's fate was so cruell and uncommon that I make no doubt the Black actor and accomplices, by some means or other, will cast up, as is almost constantly the case of those who are concerned in the dreadfull crime of murder. Your letter was the only account I had from my Brothers of this affair, which I own has given me some concern, I shall make no reflections on this behaviour of theirs, as it is not in my power to make good natured ones, it makes me very unhappy that I can't make one among you on this melancholy occasion, in which we are so much concerned in particular, and, indeed, all honest men. I hope some of our Friends are appointed to the ffactory of that estate, or at least have aplyed for it, were I in the countrie I'm shure I would, I think it shou'd not be given up to those masked villains, but as you are on the spott you can best discern what is to be done, as you have a thorough knowledge of the state of the countrie.

(9) EXCERPT FROM LETTER FROM JOHN CAMPBELL OF ACHALADER TO (HIS BROTHER-IN-LAW) "JOHN CAMPBELL OF BARCADDINE, ESQ., AT EDINBURGH," DATED "ACHMORE, 16TH FEBY., 1753."

Achmore, 16th Feby., 1753.

As I'm to go early next week to Taymouth I'll make what enquiry I can to find out Brecks haunts, if he is within reach this is a favourable season to entrap him.

(9) EXCERPT FROM LETTER FROM JOHN CAMPBELL OF ACHALADER TO (HIS BROTHER-IN-LAW) JOHN CAMPBELL OF BARCADDINE, DATED "ACHMORE, 5TH MAY, 1753."

Achmore, 5th May, 1753.

We hear from Ballquidder that Robin Og is returned in good plight to that country well mounted. It looks as if he had been plying on the Highway in England. He gives out, at least 'tis given out in his name, that he saw Breck in France who got there in March, and who says 'twas Allan beg that actually committed the murder; and that Breck is to publish a vindication of himself.

(Note.—This remark need not be taken very seriously, even if it were certain that Breck had made it.)

## James Stewart.

(10) EXCERPT FROM LETTER FROM COLONEL JOHN CRAWFORD, APPARENTLY TO JOHN CAMPBELL OF BARCALDINE, DATED "BERWICK, 20TH MAY, 1753."

Berwick, 20th May, 1753.

I am sorry to hear that villain Breel is got out of the country. and really his escaping has lessen'd my opinion of those that call'd themselves our friends. As to the people's opinion about James Stewart's trial you may be sure that differ'd according to the Prejudices they had receiv'd about that affair: sensible people, who had no Prejudices saw guilt very strong, among others Ld. Willoughby of Brook's observation was no bad one, viz., That he saw plainly by the Tryal above Twenty five people must have known of the murder, and that only one had been hanged. Indeed if you ask my opinion about the Printed tryal, I can't help finding fault with many things. In the first place, I think there has not been due attention to correcting some of the speeches, wch. M'Intoshes speech shows plainly enough, 2nd, I don't think it was published in the order it ought to have been, and in which the man was try'd, I mean the proof ought to have follow'd the libel and debates upon it, which could have given strangers a much clearer idea than by bringing in the proof by way of apendix, 3rd, I don't approve of Mr. Brown's getting the Advocates speech for two months to study, he ought to have had no assistances but what occur'd from the Proof, 4th, it was monstrous to insert or allow to be inserted a speech for Stewart which he never made. We all know who were present that the previous knowledge was what he mention'd, and that he never said any such thing as his being ignorant of the murder as the child unborn, but all those things are calculated to mislead. In short there does not seem to have been that caution to guard against their artifices, which ought to have been.

(11) LETTER FROM LORD BREADALBANE TO JOHN CAMPBELL OF BARCALDINE, DATED "LONDON, 15TH DECR., 1753."

London, 15th Decr., 1753.

Sir,—I've received your letter of the 29th past with the papers enclosed in it, and yours of the 6th came to hand yesterday.

I've heard nothing further about Jas. More, except that he sent me a second letter expressing a desire to see me, which I shew'd to those to whom I communicated the first, and was advised by them not to see him: the reasons they gave were the same as before, that as he is a very worthless and a false artful fellow 'tis impossible to guess what he may pretend afterwards to have pass'd in that Interview. Tho' I have no apprehensions of any consequences of that kind, yet I thought it right to follow their advice and I sent no answer to him. I don't know if he has been examined or not, but I will collect out of your hints some questions which I will mention to be put to him if they examine him.

What you say about Mungo's affair is very extraordinary; and if the Clan carries it any further either by officiously picking new

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quarrels or by challenging again upon the former quarrel, he will be blamed by everybody if he takes any other notice of them than by putting them in prison as disturbers of him in his office, for I take that to be the real grudge. I think Mungo was imprudent in going to Lochaber, he might have caused Glendevonery to meet him half way, but allowances are to be made to young blood, who are afraid to venture to do anything that may seem cool when their honour is concerned. I'm glad Mungo came off so well, and I hope he will not set himself up to be the Don Quixote of that Countrey to fight all the windmills. Now that he has shew'd he can fight and is not afraid of them he should act as one in a public post employ'd by the Government.

In consequence of what you mention relating to the postmaster of Crief, I know no way of applying about him, as he depends upon the Postmaster General of Scotland, Mr. Hamilton, but I've writt to Ly. Breadalbane to speak about it to Ly. Mary Hamilton to tell her husband that I had heard of such a design, but hop'd he would not turn him out of his office, because I know him to be well affected to the Government and hated by the Jacobites: and as my family is the principal one whose letters come by the Crief bag; I think I may expect to have some share in recommending the person thro whose hands they pass. I remember a few years ago an attempt of this kind was made, and thru Ld. Menzie got him kept in.

Adieu, yrs.,

B.

(12) LETTER FROM JOHN CAMPBELL OF ACHALADER TO "JOHN CAMPBELL OF BARCADDINE, ESQ., AT CRIEFF," DATED 3RD FEBRUARY, 1758.

Achmore, 3rd Feby, 1758.

Dr. Br.,—I was yesterday inform'd from pretty good authority that Allan Breck the villain and his companion John Dow Greshich are now at Bohallie's, I immediately gave notice of this to Glenure, all that was thought fit to be done till you should be acquainted was to send a man, a sly fellow, who is acquainted wt. Breck and that part of the country to go under some other pretext and hover thereabouts till he could learn if there are any strangers lurking yreabouts: if there are I think it may be safely concluded he is there. You will judge whether on the intelligence already received it may be proper to advise the Justice Clerk of this that directions may be given for warning the Offrs. of the Customs at the several ports to observe if any one of Brecks appearance attempts to ship himself for Holland &c. I think the villain might be described to these officers without letting them know the person intended to be seiz'd. You will have heard that several of the fugitives in 1746 are lurking among their friends in the Highlands.

I was much diverted with the story that happened in the Parliament House, 'twas describ'd so much in the character of the persons that I thought I was present to it.

The two youngest bairns here are recovering from a fevere. I am with compts. to Lady Barcaldine and Miss Nansy, Dr. Br., yours,

J. CAMPBELL.

## James Stewart.

### APPENDIX XVI.

#### LETTERS FROM JAMES MOR M'GREGOR DRUMMOND AND TO PROPOSED ARREST OF ALLAN BRECK STEWART, &c.

(1) EXCERPT FROM LETTER, DOCKETED ON WRAPPER "DUNKIRK 12TH JUNE, 1753, AN ANONYMOUS LETTER ANENT BRECK STEWART. (THERE IS HARDLY ROOM FOR ANY DOUBT THAT THE WRITER WAS JAMES MOR DRUMMOND OR M'GREGOR, AND THAT THIS LETTER WAS ADDRESSED TO JOHN CAMPBELL OF BARCALDINE.) (BIGHOUSE PAPERS.)

Dunkirk, 12th June, 1753.

Dr. Sir,—I presume to give you this trouble as its very necessary for me to let you know of Mr. Breck Stewart who landed in this country in March last and went to Lyle (Lille) to Ogervie's Regiment with whom he was formerly, but now I understand they give him no countenance unless in a private manner yet as he stays about Lyle I suspect he may be supported privately.

I was awatwaly inform'd that he was sent over to murder your Brother and money given him for that purpose. You may judge I'll endeavour to be at the bottom of this, and shall let you know about it.

It's my opinion if you apply and procur a warrant proper to apprehend him I shall fall upon a method of bringing him within the bounds of Holland, and as there are some English Campbells in Holland they are the onely people to be applyed too you may depend I shall go any length to serve you in this affair, but as I am but poor it cannot be supposed I can go through with this unless I get some cash or a Bill to suport the carrying on of this affair. I have no manner of doubt of getting the affair done to your satisfaction, if anything is sent me let it be sent as if it were from my Brother-in-law, Nicol, by the hand of Capt. Duncan Campbell of the City Guard, Edinburgh, who knows my direction. You may believe that I have the greatest difficulty on earth to stand my ground here as our friends the Stewarts was at the pains to send a misrepresentation of me to the Court of France and to both this place and Lyle.

I was obliged latly to draw my sword in my own defence and in defence of your Brother's carактер and with a countryman, who I believe will give no further trouble for some time coming. I firmly declair to the gentlemen who are here of the Scots that no advantage was taken at Jas. Stewart's tryall and at the same time my own opinion which has alter'd the ffinesses of many here, and now begins to consider and read Stewart's tryall and explain it after ane other method which they did not formerly but conform'd to the sentiments of factions.

I beg the favour of you how soon this comes to your hands. yt. you'll be so kind as to write to my Brother-in-law to take proper care of my poor wife and children, for I left her nothing but at the mercy of her friends and at the same time left her beg with chiald, which no doubt was a very chocking affair to me or any Christian. I hope you'll let me here of your friendship in

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this as I know its of the outmost consequence to her and her poor baby. I beg, if you are to do anything in the affair mention'd, let it be done with precaution, so as I may correspond with the English Campbell to whom you are to apply with certain Directions and credit by them so as they may know me, a Divided Card with a Seal upon each half of the same kind is needfull, the one half sent me, and the other sent to the English Campbell with orders to send me a party when the card is sent them with Directions where to come. I hope in God to get this managed with Security if its soon gone about the Regiment is to move from Lyle in September. I do not know but they may be removed further from the frontiers of Holland, which will make it more difficult unless its done sooner than that time.

I am inform'd that poor Robb is taken up. I am much affraid unless your friends will interpose they will endeavour to Reach at his life. Its hard unless you write to Breadalbane to interpose in his favour. If he could procure Banishment for him it would be in favour of all of us, for he has nothing to support himself, and this would save the Court the expense of a Trial. It can be done by some interest which we have not but that I do not expect from your own family. I have no further to say but leave it entirely to yourself, but that I am and ever shall continue Dr Sir. Yours to Command.

Excuse me at subscribing.

(2) THE FOLLOWING IS A COPY OF THE LETTER SIGNED "JAS. DRUMMOND" NOW AMONG THE NEWCASTLE PAPERS, ADDL. MSS. 32753, FOL. 55, AND WHICH HAD BEEN ADDRESSED TO LORD ALBEMARLE, AND A COPY THEREOF SENT TO LORD HOLDERNESSE:—

Paris 12th October, 1753.

My Lord.—Though I have not the honour to be much acquainted with you, I presume to give you the trouble of this acquaintance. I am sorry that by a false information I was taken prisoner in Scotland in November, 1751, and by the spite (spite) that a certain faction in Scotland had at me was trayed by the Justice Court at Edinburgh when I had brought plenty of excuse which might free any person whatever of what was alleged against me, yet such a Jurie as was given me thought proper to give me a special verdict finding some parts of the layable proven, and in other parts not proven.

It was thought by my friends that I would undergo the sentence of Banishment, which made me make my escape from Edinr. Castle in November, 1752, and since was forced to come to France for my safety. I always had in my view if possible, to be concerned in Government's Service, and for that purpose thought it necessary ever since I came to France to be as much as possible in Company with the pretenders' friends so far as now that I think I can be ane useful subject to my King and country upon giving me proper Incouragement. In the first place I think it's in my power to bring Allan Breck Stewart the supposed murderer of Colin Campbell of Gleneuir, late factor of the forfit estate of Ardsheal, to England and to deliver him in safe custody so as he may be brought to Justice, and in that

## James Stewart.

event I think the Delivering of the said murderer merits the getting of a Remission from his Majesty the King, especially as I was not guilty of any Acts of Treason since the year 1746, and providing your Loep. procures my Remission upon Delivering the said murderer, I hereby promise to discover a very grand plott on footing against the Government, which is more effectually carried on than ever since the famely of Stewart was put off the Throne of Britain, and besides do all the Services that lays in my power to the Government.

Onely with this provision that I shall be received into the government's service, and that I shall have such reward as my services shall meritt. I . . . willing if your Loep. shall think it agreeable to go to Engl . . . privitly and carry the murderer alongst with me and deliver him at Dover to the Military, and after waite on such of the Kings friends as your Loep. shall appoint. If your Loep. think this agreeable I should wish General Campbell wou'd be on of those present as he knows me and my famely, and besides that I think to have some credit with the General which I cannot expect with those whom I never had the honour to know, either the General or Lieutt. Coll. John Crawford of Foulteny's Regiment wou'd be very agreeable to me, as I know both of these wou'd trust me much, and at the same time I could be more free to them than to any of the others there your loep. my Depend the motive that Induces me to make this offer at present to you in the government's name is both Honourable and Just, so that I hope no other constructions will be put on it, and for your Loeps' satisfaction I say nothing in this letter but what I am determined to perform and as much more as in my power laves with that and all that I have said is Trw:th as I shall answer to God.

JAS. DRUMMOND.

## APPENDIX XVII.

### EDITOR'S NOTES AS TO LOCAL TRADITIONS RESPECTING THE MURDER OF GLENURE AND THE TRIAL AND EXECUTION OF JAMES STEWART.

In the Appin district the events of 1752 are still a common conversational topic. The passing of one hundred and fifty-five years has not lessened the interest taken in the fate of Seumas a' Ghlinne, though it has made it possible for many unfounded and obviously inaccurate stories to acquire currency. I found, during a recent visit to the district, that only a very few of the inhabitants of Appin and Ballachulish have ever seen any printed account of the trial of James Stewart, and that not a few learned with surprise that any such record existed. This fact is not altogether to be regretted, as it justifies the belief that such tales as survive have been repeated by father to son, and are not the fanciful creations of persons whose only knowledge was derived from print.

So far as I could ascertain, no memories of the happier days of the Acharn family have been preserved, nor have the

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private doings of Glenure been favoured by the attentions of the Scannachies. I was informed by an old man in Ballachulish that he had always understood that the intentions of Glenure were believed, rightly or wrongly, to be purely selfish. The people thought he wished to become owner of Glenduror. It is said that on one occasion he sent some of his own cattle into that glen, and that this was held to have confirmed the suspicion of self-interest.

The belief is freely expressed that he ran several risks on that fateful day before the assassin's bullets laid him low. Some of the wilder spirits among the Camerons seem to have lain in wait for him without being able to take revenge. It is also generally believed that Glenure was warned that his enemies were bent on revenge, and that when he reached the south side of Loch Leven he remarked, "I am safe, now that I have left my mother's country."

It is believed that men with guns were concealed on the wooded hillside within hearing distance of each other all the way from Corran to the ferry, and that he escaped because his servant rode abreast of him on the left, or hill, side, and so screened his master, knowing that the Camerons would not shoot a man against whom they had no grudge either on the ground of name or conduct.

An intensely interesting story reached me from more than one quarter regarding the manner in which James Stewart received the news of Glenure's death. James was conversing with Robert Stewart, of the old mill at Duror, in presence of Robert's son Duncan, when a horseman appeared, riding with the recklessness of great urgency. James looked up and quietly remarked, "Co sam bith am marcaiche, cha leis chein an t'each" ("Whoever that rider may be, the horse is not his own"). The horseman proved to be Glenure's servant, John Mackenzie, who at once told the men what had happened. James turned to Robert and said, "A Rob, co sam bith an ciontach, a mise an crionlach" (this last word is now obsolete, or, at least, is not used in the same sense, but the remark means, "Ah, Rob, whoever is the culprit, I shall be the victim").

But what has tradition to say as to the identity of the murderer? As the net result of many conversations with friends and acquaintances in the country between Glencoe and Oban, I am satisfied that, if wide currency among well-informed persons can be held to put the seal of truth upon tradition, the following assertions are true:—

First, that James Stewart had no part whatever in the planning or accomplishment of the assassination;

Second, that Allan Breck, though he was an accessory, did not fire the fatal shot;

Third, that several young men were concerned along with Allan Breck in the plot against Glenure;

And, fourth, that the whole facts were known to several persons prior to the execution of James Stewart, and that at least one of those persons had to be bound with ropes by his family to prevent his going to the scaffold on the fatal morning to make the facts known.

As to the identity of the plotters and the murderer various mutually destructive tales are told. Many persons who believe themselves to be possessors of the secret are the victims of idle rumour. The real truth is known, I believe, to a few members of the Stewart clan, and to them only, and I should be the last to make public a secret that has been so well kept. Its antiquity makes it sacred, and it has been sufficient for me to receive the assurance of those who are well qualified to speak, that James

## James Stewart.

Stewart of Acharn was an innocent man. But why was this secret, now so respectable, preserved at its birth at the cost of a good man's life? Here we have a profoundly interesting problem. When I first considered the situation I concluded that the tongue-tied countrymen could have had but one adequate motive—clan loyalty, that some person or persons to whom they owed whole-souled allegiance must have been in the plot. Then accidentally I found this same view plainly stated by a gifted Lochaber lady, the late Mrs. Mary Mackellar, in an article entitled "From a Basket of Fragments" (*Oban Times*, 28th June, 1890). "Allan Breac Stewart," she says, "got the blame of the deed, and certainly he did his best to draw suspicion on himself, and those who knew better were too loyal to speak, and they all knew that James Stewart of Glenduror was innocent, and also that if they tried to save him at the expense of him whom they knew to have done the deed, he would be the one to resent it. . . . One can understand a brave man like James Stewart of Glenduror shielding with his life a young enthusiast whose love for his people had blinded him to the consequence of a rash act." Let me leave the matter there and forget all rumours.

It would be interesting to know what accounts of their doings the jurymen gave when they reached home. I have been unable to secure this information, but I may record the story that one of the jurors never reached home alive, because a natural death suddenly overtook him when on his journey.

On other details of this story, with its strong contrasts of hate and heroism, tradition speaks more clearly. Concerning the immediately subsequent events all traditions are ruled out of court, as we have contemporary accounts in writing, but none of these, so far as I am aware, has recorded the fact that as he mounted the scaffold James repeated aloud the words of the 35th Psalm, a Psalm which is now known all over the Western Highlands as "Salm Sheumais a' Ghlinne" ("James of the Glen's psalm"). The reader who cares to reperuse those mighty verses in the light of James's dying speech will find them most wonderfully apt, and I respectfully commend the incident to the consideration of Dr. Prothero, the author of "The Psalms in Human Life."

Concerning the ultimate fate of the gallows and its victim's body there are eerie stories. The soldiers who guarded the gibbet used to allow friends of the victim to pay their respects to his mortifying remains. A very aged residenter in Ballachulish repeated to me the account given him in his early youth by an old Stewart lady of her pious attentions in wiping the dust from her clansman's dead face, and of her terror in later months, when the bones were dry, at their clattering in the winds when she passed down the public road o' nights.

The ghastly scene made day loathsome, and the restless bones—joined together with wire where Nature's joinings had given way—made night weird in Ballachulish for several years. At last, the old folks say, a "daft" lad (Mac a' Phi a' chuthaich—Macphee of the madness) determined to make an end of the local horror. He was urged on, no doubt, by saner men, who were sympathisers with James Stewart. He overthrew the gallows and cast it into Loch Leven, whence it floated down Loch Linnhe and up Loch Etive, landing finally, a strange piece of flotsam, near Bonawe. Here it found a humaner use, and was incorporated in the structure of a wooden bridge.

The bones of its victim were secretly collected and buried by night, it is said, with the kindred dust of some of the Ardsheel Stewarts in Keil Kirkyard in Duror of Appin. Bishop Forbes,

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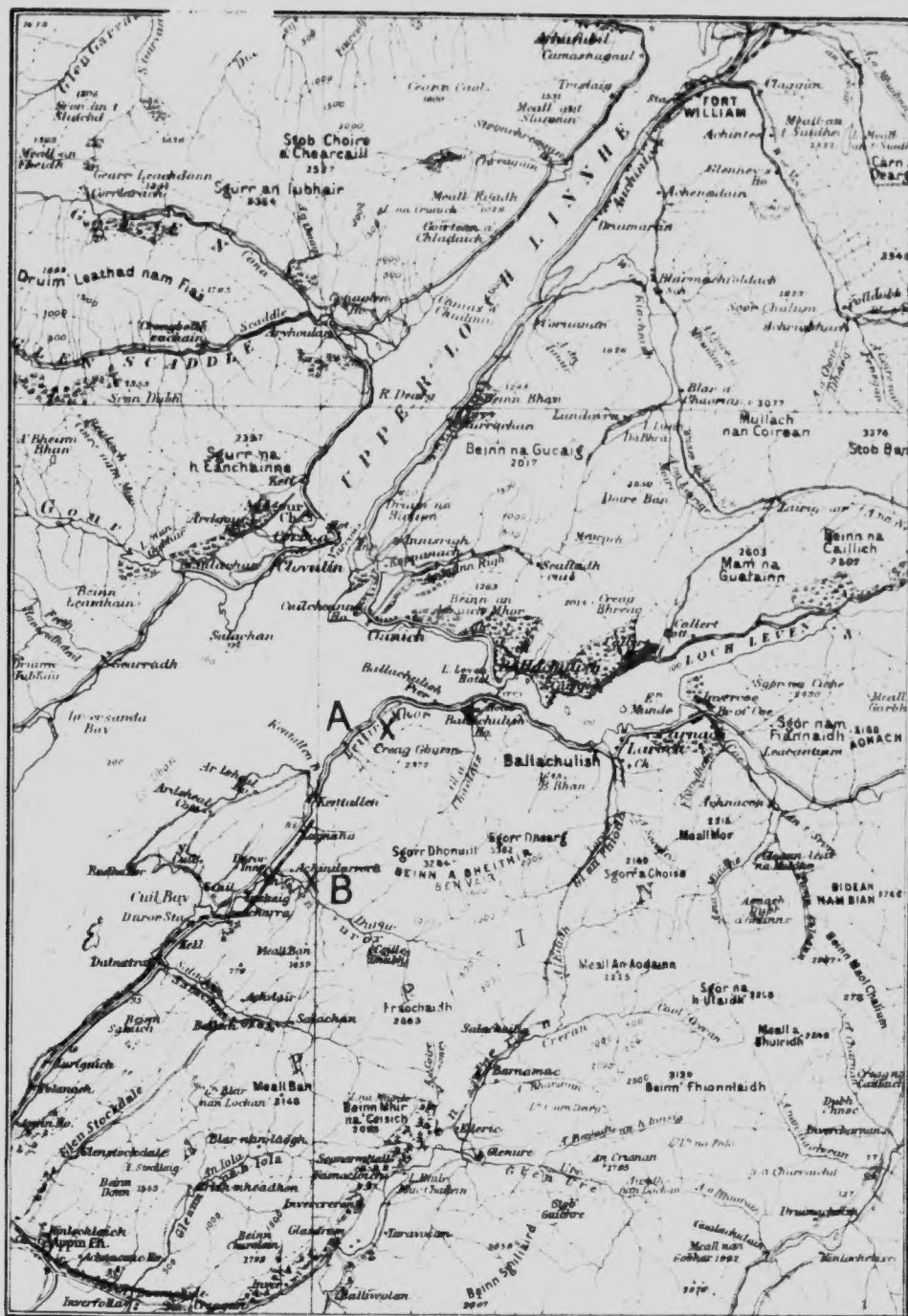
who visited Ballachulish in 1770 and breakfasted with a daughter of James of the Glen, a milliner in Lochaber, tells us, in his "Journals of Episcopal Visitations" that young Stewart of Ballachulish carefully gathered the bones and placed them in the same coffin with the body of Mrs. Stewart.

A later entry in the bishop's "Journal" contains the following statement, which is of intense interest by itself, and also as showing how James's character was estimated a generation after his death:—"Here we were told that a gentleman of the name of Cameron charitably visited James Stewart when prisoner in Fort William after sentence of death had been pronounced, and generously offered to rescue him with 50 men only, from the command that might be appointed to guard him to the place of execution, which proposal, equally friendly and courageous, James as generously refused, alledging that such an attempt would no doubt be attended with more hurt to his country than his life was worth, and therefore expressly desired such a thing might never be mentioned again. The spot where the attempt was to have been made was pointed out to me, and from its situation I am fully persuaded it would have succeeded, especially as the day proved most tempestuous and rainy, and poisoned the muskets of the party—two companies—so that they could not have been discharged. Besides, the poor sogers, greatly sympathising with the prisoner, looked for some such attempt, and were determined to make only a sham resistance against any attack" (p. 305).

After many years had passed, a young girl named Seonaid Nic Aonghais (Janet MacInnes) was tending her father's cattle in Gleann a' Chaolais, the glen behind Ballachulish house, when she found a gun in the hollow of a large elder tree. She took the gun home and showed it to old Mr. Stewart of Ballachulish, who said on examining it, "'Se sin gunna dubh a mhi-fhorta'n, a Sheonaid" (that is the black gun of the misfortune, Janet). The gun was known in the district as "An t-slinneanach,"\* and is still, or was recently, kept as an interesting and awesome relic in a private house in the Ballachulish district.

\* Shoulder, or shoulderblade, and the name "An t-slinneanach" seems to imply that it was a heavy gun or musket, fit only to be carried on the shoulder.





A. SCENE OF MURDER. B. ACHARN STEWART'S HOUSE